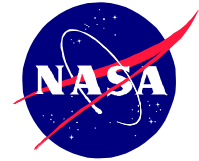


National Aeronautics and  
Space Administration

**Headquarters**  
Washington, D.C. 20546-0001



Reply to Attn of: W

June 24, 2002

**TO:** Langley Research Center  
Attn: 106/Director

**FROM:** W/Assistant Inspector General for Inspections and  
Assessments

**SUBJECT:** Review of the Langley Research Center's Patent Licensing Process,  
G-02-005, Final Report

### **EXECUTIVE SUMMARY**

The National Aeronautics and Space Administration (NASA) Office of Inspector General (OIG) reviewed the Langley Research Center's (Langley's) patent licensing process. This process protects the Government's rights to new technology generated by NASA programs and promotes the utilization of inventions arising from Federally supported research and development. Our review examined Langley's procedures for granting licenses and the criteria used in making license determinations, assessed how the performance of NASA's licensing partners is measured, determined the frequency of terminating partnerships for nonperformance, and determined the propriety and frequency of NASA investment in technology after licensing.

In issuing a patent license, NASA can grant either a nonexclusive or an exclusive license. Nonexclusive licenses may be granted to multiple companies whereas exclusive licenses are granted to one company. Langley issued exclusive licenses to a greater extent than NASA as a whole or other comparable Federal Agencies. While there are valid reasons for issuing exclusive licenses in certain situations, the use of exclusive licenses limits the opportunities available to NASA to promote the utilization and commercialization of its inventions. Langley also did not adequately document the rationale for granting a license, the criteria used for decisions, or the justification for why an application met or did not meet the exclusive license requirements.

Langley evaluates a licensing partner's performance by examining licensing royalty payments and the company's progress reports. Langley did not always receive royalty payments or progress reports in a timely manner, nor did Langley always pursue companies for delinquent payments and report submissions.

Langley management concurred with our three recommendations to improve its patent licensing process and has taken or plans appropriate corrective actions.

## **BACKGROUND**

### **A. Patents**

A patent<sup>1</sup> gives an inventor exclusive right to his/her invention, including the control of its manufacture. NASA currently owns over 1,000 patents and patent applications that protect inventions in hundreds of subject matter categories. These patents are the result of civil servant, contractor, and grantee inventions.

NASA generally obtains a patent for an invention under two conditions. First, an invention made in the performance of work under a NASA contract is the exclusive property of the United States if the NASA Administrator (Administrator) determines that the contractor employee was acting within the scope of the contract.<sup>2</sup> The Administrator can make an exception if waiving NASA's right to an invention would better serve the public interest. An exception can also be made if a NASA-funded individual, small business, or nonprofit organization that makes an invention elects to retain title to it.<sup>3</sup> Second, NASA may receive exclusive property rights to any invention made by its civil servant employees if the invention was developed during working hours, within government facilities, or as part of the employee's official duties.<sup>4</sup>

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<sup>1</sup> Black's Law Dictionary indicates that a patent confers an "exclusive right to make, use, or sell an invention for a specified period...granted by the federal government to the inventor." Similarly, *The American Heritage® Dictionary of the English Language* defines a patent as a grant made by a government that confers upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time. Hence, a patent owner can exclude others from making, using, or selling an invention for the life of the patent.

<sup>2</sup> National Aeronautics and Space Act of 1958, Section 305(a); 42 USC 2457(a).

<sup>3</sup> The Bayh-Dole Act (Public Law 96-517, Patent and Trademark Act Amendments of 1980) allows contractors who meet the definition of a small business or nonprofit organization the option to retain the title to inventions developed under federally funded research programs, such as those at NASA.

<sup>4</sup> Presidential Executive Order (EO) 10096, as amended by EO 10930, and 37 CFR 501.

## B. Licenses

After filing a patent application for an invention, NASA may commercialize the invention by granting either a nonexclusive or an exclusive license<sup>5</sup> to a company or an individual.<sup>6</sup> Nonexclusive licenses are easier to obtain (nonexclusive licenses are required to meet the license application requirements outlined in 37 CFR Part 404) and may be granted to multiple companies to practice<sup>7</sup> in all commercialization areas of an invention. Nonexclusive licenses have the potential to enhance competition because multiple companies can license the same invention.

An exclusive license is granted to *one* company to practice in all commercialization areas of an invention. NASA may grant an exclusive license in cases where the technologies developed are at an early stage and require significant investment to advance the technology readiness level. In these cases, exclusive licenses are granted to provide an incentive to the licensee. A company generally prefers an exclusive license because exclusivity allows the company to unilaterally practice an invention. Once NASA grants an exclusive license to a company, other companies wishing to license the technology are referred to the licensee for a possible sub-license.<sup>8</sup>

A partially exclusive license is a variation of an exclusive license and may be granted to one company to pursue limited commercialization (i.e., geographically limited or industry-specific).<sup>9</sup> Although more than one company may have a partially exclusive license for an invention, the number of companies is limited and the exclusions can affect competition.

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<sup>5</sup> A license is a legal arrangement whereby a patent owner allows production or marketing of products or services to a person or company, generally in exchange for royalty payments. According to 37 CFR 404.2, the purpose of a license is to “promote the utilization of inventions arising from federally supported research or development” for the public interest.

<sup>6</sup> 35 USC 18 – Patent Rights in Inventions Made with Federal Assistance. This law is implemented by 37 CFR Part 404 – Licensing of Government Owned Inventions.

<sup>7</sup> The practice of an invention is its ultimate translation into a physical, useful form.

<sup>8</sup> If Langley licenses a technology to a company and NASA subsequently patents a related invention, then consideration is given to licensing those technologies in a “bundle” to the same company. If Langley does not bundle technologies and grants exclusive licenses to more than one company for related patents, it advises the companies to practice due diligence to avoid potential legal concerns. Under this circumstance, one company could ultimately infringe upon another company’s license when commercializing the subsequent invention. Langley’s procedure is to anticipate such situations and avoid them by developing appropriate licensing strategies.

<sup>9</sup> Throughout this report the term “exclusive license” is meant to include “partially exclusive license.”

## I. LICENSING PROCESS

### A. Major Steps and Application Evaluation

At Langley the licensing process<sup>10</sup> begins after a researcher prepares an invention disclosure form and submits it to the Patent Counsel Office of the Technology Commercialization Program Office (TCPO).<sup>11</sup> The TCPO, sometimes with the assistance of a contractor, evaluates the invention to assess its commercial potential. If an assessment is positive, then the Patent Counsel Office prepares a patent application while other TCPO officials concurrently determine which companies are interested in that particular invention through marketing and outreach tools such as industry briefings and exhibits at trade shows and conferences.<sup>12</sup>

Next, a company interested in a particular invention submits a license application to the Patent Counsel Office where it is evaluated for completeness in conjunction with the Technology Commercialization Project Managers (TCPM). If the application is for an exclusive license, then a notice of a prospective license, identifying the invention and the prospective licensee, is published in the *Federal Register*.<sup>13</sup>

A NASA team, typically comprised of a lead TCPM and a Patent Attorney, have primary responsibility for evaluating the license application.<sup>14</sup> These individuals may draw upon their extended team members, including the Business Manager, Senior Technologist, a Marketing

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<sup>10</sup> NASA's patent licensing process is outlined in its *Procedures for Licensing NASA Patents and Patent Applications*, known as the *Licensing Manual* (latest version is dated January 2002).

<sup>11</sup> NASA Policy Directive 2091.1, *Inventions Made by Government Employees*, requires employees to report their inventions to the Center's Patent Counsel. NASA Form 1679, "*Disclosure of Invention and New Technology (Including Software)*," is used to report conception of an invention.

<sup>12</sup> NASA Headquarters publishes a Notice of Availability once Langley has filed a patent application. By this time, the TCPO generally knows which companies are interested in licensing the technology or which market segments to target and leading companies within these segments.

<sup>13</sup> 37 CFR 404.7 requires that the announcement identify the invention and proposed licensee and provides for a 60-day period for the public to file written objections. The Technology Transfer Act of 2000 revised the public notice period to 15 days (35 USC 209 (e)).

Manager, and others to assist in the evaluations. As part of this process, the team also reviews the exclusive license requirements of 37 CFR 404. NASA is required to evaluate a company's request for an exclusive license against specific criteria contained in 37 CFR 404.7. Before NASA grants an exclusive license, it must make certain determinations related to how the public interest is best served, the necessity of an exclusive license, the proposed terms, and competition with other business firms.

The TCPO is refining its process to better factor in license applicants' strengths and weaknesses in terms of capability, capitalization, and commitment. The TCPO is modifying its rating sheet to allow for better evaluation of these three areas.

Following the evaluation, the TCPM and Patent Attorney formally negotiate the license and the Patent Counsel Office makes a recommendation to NASA Headquarters to grant or deny the proposed license.<sup>15</sup> At NASA Headquarters, an Intellectual Property Division attorney, the Associate General Counsel for Intellectual Property, and the General Counsel review the application. The General Counsel is NASA's final decision-maker in the license application process.

## **B. Use of Exclusive Licenses**

In fiscal years (FY) 1999 through 2001, Langley granted 22 licenses, of which 7 were nonexclusive (32 percent) and 15 were exclusive (68 percent). In its 1999 report, the General Accounting Office (GAO) reported on the licensing of patents in six Federal Agencies for FY's 1996-1998.<sup>16</sup> GAO found that NASA granted exclusive licenses 65 percent of the time. Our analysis, which covered a 10-year period (1992-2001), found that overall NASA issued exclusive licenses 59 percent of the time.<sup>17</sup> NASA's use of exclusive licenses contrasts with

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<sup>14</sup> The TCPO implemented this approach over the last 2 years. Previously, a lead TCPM performed the evaluation, which was subsequently reviewed by a Patent Attorney. The TCPM used a rating sheet with specific, numerically valued criteria. This process could be arbitrary because it was based almost entirely on the TCPM's opinion. In addition, the current process is outlined in the Langley Management System (LMS), "Identification of Partners for Patent Licensing and Technology Transfer," LMS-OP-1709.

<sup>15</sup> Items addressed in the negotiation process include license type, license duration, royalty payments, and frequency of reporting.

<sup>16</sup> The General Accounting Office's report *TECHNOLOGY TRANSFER – Number and Characteristics of Inventions Licensed by Six Federal Agencies* (GAO/RCED-99-173, June 1999), page 8, figure 4.

<sup>17</sup> Langley is one of ten NASA Centers that grant licenses. Appendix A shows the number and types of patent licenses that NASA granted for FYs 1992 through 2001. For most of these years, NASA granted more exclusive licenses than nonexclusive licenses.

GAO's findings regarding six reviewed agencies (including NASA). GAO found that only 26.8% of the total licenses issued by the six departments during the period of fiscal years 1996 – 1998 were exclusive. While the use of exclusive licenses within NASA as a whole has declined over the past 3 fiscal years (to 48 percent), Langley has continued to use exclusive licenses over two-thirds of the time.

A Langley official indicated that NASA grants exclusive licenses because of its focus on research (versus development) and aerospace technology. As a result, the state of a particular patented technology may not be adequately advanced for commercialization. A company may see that a significant investment is necessary before the technology is ready to be sold to the public. Consequently, a company may be hesitant to significantly invest in a new technology without being granted an exclusive license.<sup>18</sup>

While there are valid reasons for issuing exclusive licenses in certain situations, the use of exclusive licenses limits the opportunities available to NASA to promote the utilization and commercialization of its inventions. Nonexclusive licenses have the potential to open the new technologies to more companies.

**Recommendation 1:** The TCPO should review its procedures for issuing licenses to ensure that nonexclusive licenses are issued wherever practicable.

### C. Documentation

The *Licensing Manual* states, “an administrative record of all licensing decisions must be created and maintained to establish that NASA has not abused its discretion in any way and that a rational basis exists for all decisions.”<sup>19</sup> We randomly selected and reviewed several official files that contained license applications, evaluations, and other relevant communications. None of these files contained adequate documentation of the rationale for granting a license, the criteria used for decisions, or the justification for why an application met or did not meet the exclusive license requirements of 37 CFR 404.7. The files did contain “Recommendation to Make a Determination to Grant/Deny” letters; however, these letters did not provide an adequate analysis of how licensing decisions were made. As a result, we could not independently verify how the applications had been evaluated.

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<sup>18</sup> Technology derived from NASA's patents may not be sufficiently advanced to a point where it can be easily commercialized. Consequently, NASA personnel sometimes provide technical assistance to aid in the technology's development and subsequent commercialization. This assistance may be provided on a cooperative or cost-reimbursable basis. Reimbursement could be waived if the commercialization effort is also mission-related.

At Langley, this assistance is most often provided via a Space Act Agreement (SAA) approved by the Center Director. The SAAs are generally entered into for science or engineering efforts geared toward commercialization of an invention, including production or development. However, they are not used to support activities that a company should do on its own, e.g., clinical trials. In the calendar years 1999 through 2001, Langley awarded four license-related SAAs to three companies.

<sup>19</sup> *Licensing Manual*, Section 2.5.

We learned from speaking with several TCPMs and a Patent Attorney that TCPO personnel maintain unofficial files containing relevant documentation. Some personnel could recall important aspects of the evaluation process and could produce written notes related to criteria they used to make decisions. One TCPM produced an official file that contained a recent application and adequate documentation, including an evaluation of the criteria outlined in 37 CFR 404.7.<sup>20</sup> We noted that the documentation in this file was not overly burdensome and could easily be prepared for every application and placed in the official file, and TCPO officials agreed with this conclusion.

Documentation is an important internal control within the evaluation process. Specifically, documentation such as the rating sheet that shows the criteria and rationale for granting a license and the justification for why an application met or did not meet the 37 CFR 404.7 requirements for an exclusive license should be prepared and maintained. By preparing and maintaining this information, management ensures that a complete written record of the significant events is prepared and available for examination.<sup>21</sup>

**Recommendation 2:** The TCPO should ensure that official files contain documentation of the criteria and rationale for granting or not granting a license and, where applicable, the justification for why an application met or did not meet the requirements for an exclusive license.

## II. EVALUATION OF LICENSING PARTNERS

Langley evaluates a licensing partner's performance by examining licensing royalty payments and the company's progress reports. These criteria are contained in each licensing agreement. A licensing agreement typically includes an up-front licensing royalty payment followed by payments at agreed-upon intervals. The amounts and dates of the payments are negotiated. For FY 2001, Langley collected \$362,577.15 in royalty payments.

If licensees do not submit royalty payments, then NASA does not receive the royalty income to which it is entitled. If licensees do not submit progress reports, then NASA cannot ensure that agreed-upon technology and commercial objectives are obtained.

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<sup>20</sup> According to the TCPM, two companies were competing for an exclusive license regarding the technology. Due to the possibility of a challenge to its decision, the TCPM documented the evaluation process and placed the documentation in the official file.

<sup>21</sup> The General Accounting Office's *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, November 1999), page 15.

If a company fails to submit agreed upon royalty payments, or if an evaluation of its progress reports is unsatisfactory, NASA can terminate the license for cause. We were told that the TCPO works closely with unsatisfactorily performing companies to avoid having to terminate patent licenses. Table 1 shows license terminations at Langley and at all other NASA Centers for the last 3 calendar years.

**Table 1. Terminations in calendar years 1999-2001**

	<b>1999</b>	<b>2000</b>	<b>2001</b>
Langley	8	4	8
All other NASA Centers	10	15	19

Some of the official files we reviewed showed that the TCPO had not received royalty payments or progress reports in a timely manner and that the TCPO had not promptly pursued companies for delinquent royalty payments and report submissions. In one example, a company had owed Langley royalties for nearly 5 years before the TCPO requested that the company submit its initial payment.<sup>22</sup> In another example, it was not discovered that a company had not paid its first royalty payment until a year later when the company did not make its second payment. In this example, the company arranged to make payments.

The last example illustrates how the collection process can be improved when the TCPO makes better use of its tracking system database, NASA TechTracS (NTTS). Currently, this system generates an automated e-mail to the responsible TCPM whenever royalty payments or progress reports are due.

In addition to the files review, we obtained two NTTS listings. The first listing showed outstanding royalty payments of \$202,750. Out of a total of 17 licensees, 2 had not made

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<sup>22</sup> In this case, the TCPO eventually terminated the patent license because the company did not comply with the licensing agreement.



payments for more than 5 years.<sup>23</sup> The second listing showed 26 licensees had not submitted progress reports in a timely manner.<sup>24</sup> One licensee had not submitted a report since 1987.

The *Licensing Manual* designates the Center Patent Counsel as the responsible official for following up on the licensee reporting requirements.<sup>25</sup> TCPO officials have acknowledged that royalty payments and progress reports need improvement and told us that they have enhanced internal communications to address these areas. Royalty payments and progress reports are now discussed during quarterly business meetings<sup>26</sup> and at bimonthly meetings.<sup>27</sup>

**Recommendation 3:** The TCPO should timely terminate licensees who are in material breach of the license after reasonable efforts to assure future performance have failed.

### SUMMARY AND EVALUATION OF NASA MANAGEMENT RESPONSE

Langley management concurred to the three recommendations and has taken or plans appropriate corrective actions. We consider the recommendations resolved pending verification of corrective actions. In its response, Langley management emphasized that its practice is to pursue exclusive licensing versus nonexclusive licensing on a case-by-case basis rather than relying on a broad mandate emphasizing one over the other. While we agree that

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<sup>23</sup> For one of these companies, the license does not actually exist because NASA Headquarters had not paid the patent maintenance fee to the USPTO. The TCPM has been unable to locate this licensee and is working to terminate the license. For the second company, the TCPO has not finalized paperwork to terminate the license.

<sup>24</sup> For FYs 1999 through 2001, Langley received 85 progress reports.

<sup>25</sup> *Licensing Manual*, Section 6.4.

<sup>26</sup> This change was implemented in approximately August 2001.

<sup>27</sup> This change was implemented in January 2002.

there are valid circumstances for issuing exclusive licenses, we believe that a greater emphasis on nonexclusive licenses has the potential to open the new technologies to more companies. Appendix B contains management's complete response.

## CONCLUSION

Langley's patent licensing process, a part of NASA's overall patent program, helps protect the Government's rights to new technology generated by NASA programs. However, Langley can better promote the utilization of inventions arising from Federally supported research and development by issuing nonexclusive licenses wherever practicable. Also, while the major steps of Langley's licensing process were consistent with the NASA *Licensing Manual*, its documentation and license administration practices were inconsistent with the *Manual*. For enhanced effectiveness, the Langley TCPO should ensure that official files contain documentation of the criteria and rationale for granting or not granting a license and, where applicable, the justification for why an application met or did not meet the requirements for an exclusive license. The TCPO should also carefully monitor the timeliness of royalty payments and progress reports, and terminate unsatisfactory licensees.

[original signed by]

David M. Cushing

4 Enclosures

Appendix A: Number and Type of Patent Licenses Granted

Appendix B: NASA Management Response

Appendix C: Report Distribution

NASA Office of Inspector General Reader Survey

**MAJOR CONTRIBUTORS TO THIS REPORT**

Dr. Aaron Manka, Investigative Scientist (team leader)

Pamela S. Withrow, Management Analyst

## **Appendix A**

### **Number and Type of Patent Licenses Granted by NASA**

**Number and Types of  
Patent Licenses Granted by NASA<sup>1</sup>**

<i><b>Fiscal Year</b></i>	<i><b>Nonexclusive</b></i>	<i><b>Exclusive</b></i>	<i><b>Total</b></i>
1992	1	4	5
1993	5	7	12
1994	3	8	11
1995	8	21	29
1996	10	25	35
1997	15	21	36
1998	14	25	39
1999	21	19	40
2000	19	26	45
2001	21	12	33
<i><b>Total</b></i>	117	168	285

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<sup>1</sup> Source: [http://www.hq.nasa.gov/ogc/intellectual\\_property/regina.html](http://www.hq.nasa.gov/ogc/intellectual_property/regina.html).

# **Appendix B**

## **NASA Management Response**

National Aeronautics and  
Space Administration

**Langley Research Center**  
100 NASA Road  
Hampton, VA 23681-2199



May 24, 2002

Reply to Attn. of: 106

**TO:** NASA Headquarters  
Attn: W/Assistant Inspector General for Inspections and Assessments

**FROM:** 106/Director

**SUBJECT:** Review of the Langley Research Center's Patent Licensing Process,  
G-02-005, Draft Report for Management Response

The NASA Langley Technology Commercialization Program Office (TCPO) appreciates the professionalism and courtesy extended during the above referenced review. The patent licensing process for Langley's unique technologies involve a complex mixture of law, regulation, policy, and business principles. Accordingly, on the topic of licensing, the report appears to have concluded that nonexclusive licenses are "preferred" over exclusive licenses. The report's assessment of Langley's process for licensing hinges largely on its expressed preference for nonexclusive licenses, as evidenced by its conclusion that exclusive licenses "limit[s] the opportunities available to NASA to promote widely the utilization and commercialization of its inventions" while nonexclusive licenses "enhance commercialization by opening up the new technologies to more companies". The information offered to support this belief that nonexclusive licenses are generally more preferable appears to be based on the referenced results of a 1999 GAO report on "Technology Transfer: Number and Characteristics of Inventions Licensed by Six Federal Agencies" (GAO/RCED-99-173, copy enclosed). A thorough review of the GAO reports reveals that, although numerous statistics are presented, the GAO report does not provide information or analysis to support a conclusion that one type of license should generally be preferred over the other. Thus, we do not understand the basis for the preference expressed for nonexclusive licenses in the present IG report on Langley's patent licensing process.

The TCPO approach to deciding on the level of exclusivity in patent licensing is based on analysis of numerous situational factors. Such factors include the amount of development work required to advance the technology readiness, the potential market(s) for the technology, and the type(s) of license requested by a license applicant. This approach is supported by the Associate General Counsel for Intellectual Property at NASA Headquarters. Further, over the last 6 years, Langley has conducted numerous benchmarking studies of the commercialization practices of universities, government organizations, and private companies. Results clearly indicate that one type of license (e.g., exclusive vs. nonexclusive) cannot be considered generally better than the other for ensuring successful commercialization. For example, if a significant investment is required to advance the technology to readiness level, which is the case in the majority of Langley's very early stage technologies, an exclusive license may be the necessary incentive for the licensee.

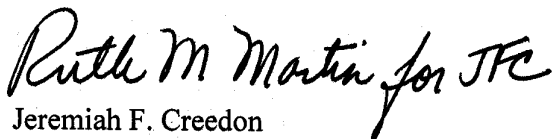
In addition, according to a study published in the Association of University Technology Managers, entitled "Managing the University Technology Licensing Process: Findings from Case Studies" it was determined that granting an exclusive license is an

"important factor in successfully licensing university technology: it was cited as critical in virtually all of our cases. Many of our case study entrepreneurs, regardless of the size of the specific technology in question, would not have licensed their technology without an exclusive license. The threat of direct competition in a niche market is usually too daunting for licensees. Therefore, exclusive licenses are often necessary economic incentives for would-be licensees."

Furthermore, nonexclusive licenses in certain markets can favor major companies with the resources to command market share. This has the unintended effect of benefiting large companies at the expense of small companies. In summary, the decision to pursue exclusive licensing versus nonexclusive licensing is best determined on a case-by-case basis rather than relying on a broad mandate emphasizing one over the other.

Langley's response to report recommendations for corrective action is reflected in Enclosure 1. Additional comments on clarification of above referenced report footnotes are included in Enclosure 2.

Please address questions and requests for additional information to Buena E. Crawford at 757-864-8084.

  
Ruth M. Martin for JFC

Jeremiah F. Creedon

Enclosures

cc (w/o Encls):

HQ/JM/Mr. Werner

HQ/GK/Ms. Thompson-King

HQ/GP/Mr. Mannix

HQ/RS/Ms. Humphrey



**Management Response to Draft Report (“Review of the Langley Research Center’s  
Patent Licensing Process, G-02-005)**

**Recommendation 1: The TCPO should review its procedures for issuing licenses to ensure that nonexclusive licenses are issued wherever practicable.**

**Concur.** NASA LaRC’s current practice includes evaluating a number of factors that determine the type(s) of license that may be offered. Such factors include the amount of development work required to advance the technology readiness, the potential market(s) for the technology, and the type(s) of license requested by a license applicant. However, NASA LaRC will review related procedures to ensure that full consideration is given to the determination of the type(s) of license to offer. Changes deemed appropriate to improve our analysis and decision making process regarding the exclusivity of licenses will be implemented by the end of this fiscal year.

**Recommendation 2: The TCPO should ensure that official files contain documentation of the criteria and rationale for granting or not granting a license and, where applicable, the justification for why an application met or did not meet the requirements for an exclusive license.**

**Concur.** TCPO has increased the emphasis and awareness within the organization of the need to place such documentation within the official case file. This directive has been addressed in staff meetings and will continue to be emphasized. The Patent Counsel Office will continue to monitor the official files to ensure that appropriate documentation is contained therein.

**NASA LaRC considers this recommendation closed.**

**Recommendation 3: The TCPO should timely terminate licensees who are in material breach of the license after reasonable efforts to assure future performance have failed.**

**Concur.** Prior to this inspection, TCPO had already implemented a more proactive approach to: a) identify delinquent licenses, b) attempt to revive failing licenses where practicable, and c) terminate licenses where appropriate. Both the Patent Counsel and the TCPO Business Manager receive at least monthly status reports on delinquent licenses (sample report is enclosed). Any licensees that are delinquent in paying royalties or providing annual reports are discussed with the responsible TCPM and Patent Attorney to determine what actions have already been taken and what corrective action, if any, is needed. In addition, it should be noted that several of the delinquent license examples cited in this report to support “Recommendation 3” reflect situations existent prior to this inspection, and are not reflective of the current, improved practices of TCPO. **We consider this recommendation closed.**

With regard to the content of the report, two points of clarification follows:

i) Footnote 13: should be corrected to reflect that the public notice period was revised in the Technology Transfer Act of 2000 to 15 days rather than 60 days (35 USC 209(e)).

ii) Footnote 18: states that NASA wants to be reimbursed for technical assistance it provides because "a company can unilaterally terminate a license". The fact that a licensee can unilaterally terminate a license is simply not a factor, in any way, in the decision whether to provide assistance to a licensee, or in the decision whether to provide such assistance on a reimbursable basis or otherwise. In the current financial climate in the federal government, all agencies, including NASA, are looking to recover costs whenever possible. Thus, it is the desire for cost recovery that is the impetus for reimbursable agreements.

# **Appendix C**

## **Report Distribution**

## **Distribution**

### **National Aeronautics and Space Administration (NASA) Officials:**

A/Administrator  
AA/Chief of Staff and White House Liaison  
AB/Associate Deputy Administrator for Institutions  
AI/Associate Deputy Administrator  
B/Acting Chief Financial Officer  
B/Comptroller  
G/General Counsel  
H/Assistant Administrator for Procurement  
J/Assistant Administrator for Management Systems  
JM/Director, Management Assessment Division  
L/Assistant Administrator for Legislative Affairs  
P/Assistant Administrator for Public Affairs  
R/Associate Administrator for Aerospace Technology  
W/Program Manager, Financial Statement Audit Oversight, Training, and Policy  
X/Assistant Administrator for Security Management and Safeguards  
Langley Chief Counsel  
Langley Patent Counsel

### **NASA Advisory Officials:**

Chairman, NASA Aerospace Safety Advisory Panel  
Chairman, NASA Advisory Committee

### **Non-NASA Federal Organizations and Individuals:**

Assistant to the President for Science and Technology Policy  
Deputy Associate Director, Energy and Science Division, Office of Management and Budget  
Budget Examiner, Energy Science Division, Office of Management and Budget  
Associate Director, National Security and International Affairs Division,  
General Accounting Office  
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

**Chairman and Ranking Minority Member of each of the following Congressional Committees and Subcommittees:**

Senate Committee on Appropriations  
Senate Subcommittee on VA-HUD-Independent Agencies  
Senate Committee on Commerce, Science and Transportation  
Senate Subcommittee on Science, Technology and Space  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
House Subcommittee on VA-HUD-Independent Agencies  
House Committee on Government Reform and Oversight  
House Subcommittee on National Security, International Affairs, and Criminal Justice  
House Committee on Science  
House Subcommittee on Space and Aeronautics

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### Report: Review of the Langley Research Center’s Patent Licensing Process, G-02-005

Please circle the appropriate rating for the following statements.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	N/A
1. The report was clear and readable	5	4	3	2	1	N/A
2. The report was logically organized	5	4	3	2	1	N/A
3. The report was concise and to the point	5	4	3	2	1	N/A
4. The facts were presented fairly and accurately	5	4	3	2	1	N/A
5. The report contained sufficient information to support the finding(s) in a balanced and objective manner	5	4	3	2	1	N/A
6. The recommendation(s) made sense and were relevant	5	4	3	2	1	N/A
7. The recommendation(s) were timely	5	4	3	2	1	N/A

*Overall, how would you rate the report?*

- Excellent       Fair  
 Very Good     Poor  
 Good

*How could we improve the report?* \_\_\_\_\_

\_\_\_\_\_

*Are there steps we should have taken, but didn't?* \_\_\_\_\_

\_\_\_\_\_

*Is there anything else we should have done differently?* \_\_\_\_\_

\_\_\_\_\_

*How did you use the report?* \_\_\_\_\_

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*Can you suggest any additional (related or unrelated) issues that the NASA Office of Inspector General should review? (You can also call our anonymous 24-hour Hotline at 1-800-424-9183)* \_\_\_\_\_

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*Additional comments* \_\_\_\_\_

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***Your occupation***

- |   |  |
|---|--|
| <input type="checkbox"/> Congressional Staff                                  | <input type="checkbox"/> Media           |
| <input type="checkbox"/> NASA Employee  | <input type="checkbox"/> Public Interest |
| <input type="checkbox"/> Private Citizen                                      | <input type="checkbox"/> Other: _____    |
| <input type="checkbox"/> Government: Federal: _____ State: _____ Local: _____ |  |

***May we contact you about your comments?***

**Yes:** \_\_\_\_\_

**No:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

Thank you for completing this survey.