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**PROPHETIC PITFALLS**

To the editor:

Having read Patrick Kelly's article "Prophetic Patents in Biotechnology" (*Bio/Technology* **8**:24, Jan. '90), I was delighted and surprised that "without data to support your thinking, and no way to get the data without funding and lab time" it was

still possible to obtain enforceable patent protection "based entirely on hypotheses, library research, and discussions"—rather than work. I also read, however, that patents must also contain "full, clear, concise, and exact terms" to "distinctly claim the subject matter." I therefore sought clarification from the Office of Corporate Liaison and Technology Transfer at Rutgers University, where I conduct biomedical research. The information I received changed my views on whether to proceed with a prophetic patent at this time.

First, to prevent conflicts of interest, many universities regard inventions, or new research procedures, as intellectual property of the university. Hence they require a detailed description to be submitted first to the university as a "prior disclosure" before writing any research publications, abstracts, or patent applications. Without hard data or a working model, the chances of acceptance are lessened. If the university does not pursue patenting for any reason, confidentiality is dropped, and there is no protection of the inventor's uncompleted and unpublished invention.

Second, in exchange for expert le-

gal handling and industrial licensing, Rutgers receives 82 percent of all royalties. If one obtains outside legal services, the costs are about \$15,000, not including searches or challenges. Also, the process takes from 1-3 years. Prophetic patents are no exception.

Third, according to the American Bar Association's brochure "What Is a Patent?" formal claims must be precisely prepared. Accordingly, there are limitations to "new matter." As every researcher knows, even the most clever and detailed new ideas must still be worked out in the lab, and this often requires significant and unforeseen changes in protocols. Hence, a prophetic patent would likely require several revisions.

The above information has convinced me that, although prophetic patents may have limited application, most biotechnology patent applications should contain ideas and work at, or very near, completion before their disclosure to anyone.

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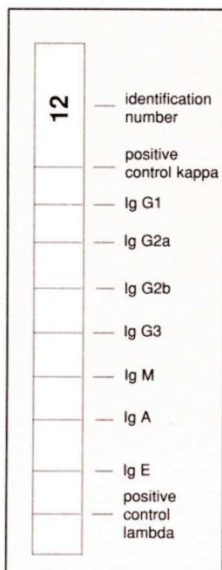
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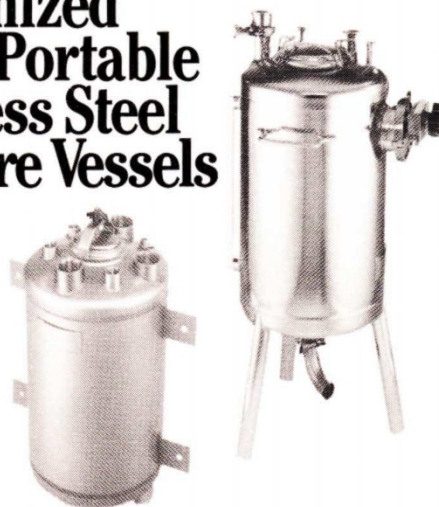
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