

## CLOSEOUT FOR M98020007

On 25 February 1998, OIG received from the president (the complainant<sup>1</sup>) of a company<sup>2</sup> an allegation of intellectual theft and false certification in a proposal<sup>3</sup> submitted by the subject,<sup>4</sup> whose company was a subcontractor<sup>5</sup> for the complainant's company. The complainant alleged that the subject had based his proposal on a patent assigned to the complainant's company, even though the subject had no rights in the patented technology, and the subject's subcontract included a confidentiality agreement. The complainant also said that he was suing the subject.

OIG examined the subject's proposal and verified that it was based upon the patented technology. Indeed, the project summary stated that the purpose of the proposal was to demonstrate the technical and economic merit of the patented invention. The subject had clearly identified the patented technology as the basis for the proposal by citing the patent in the first sentence of the proposal and several times thereafter; by including the patent in the proposal's list of references; and by providing two large copies of illustrations from the patent that were clearly marked with the patent number.

The subject told OIG that the complainant's company had approached his company to build the patented technology, and that he thought that he and his company had permission to use that technology as a basis for the NSF proposal. The subject further explained that he and his company had mistakenly believed that he had permission to use the patented technology because the purpose of the NSF award was to establish the credibility of the product based on the patent, and the complainant's company was aware of that purpose. OIG also received a letter from the complainant's attorney,<sup>6</sup> verifying that the subject mistakenly believed he had permission from the complainant's company to use the patented technology in the NSF proposal. Furthermore, the attorney indicated that the complainant and subject had reached a settlement in regard to their lawsuit, and would cooperate in any future proposals to NSF.

OIG concluded that the issues in this case arose from a breakdown in communication and collaboration between the complainant and the subject, and that the subject's mistaken belief that he had permission to proceed was not unreasonable. While it was not the best practice for the subject to proceed without clear permission to use the technology, we do not believe that the subject's actions were a serious deviation from accepted practice. We also conclude that there is no substance to the allegation of false certification in the NSF proposal, because the subject clearly indicated the proposal's reliance on the patented technology, and NSF PIs are required to certify to the originality of the proposed text and graphics, "unless otherwise indicated." Finally, the restoration of cooperation between the subject and complainant make it unlikely that further incidents of this type will occur. Accordingly, this case is closed and no further action will be taken.

cc: Integrity, IG

<sup>1</sup> Mr. [REDACTED]

<sup>2</sup> [REDACTED]

<sup>3</sup> [REDACTED] PI; received [REDACTED]

awarded [REDACTED]

<sup>4</sup> Mr. [REDACTED]

<sup>5</sup> [REDACTED]

<sup>6</sup> Mr. [REDACTED]