Statement of Senator Birch Bayh on S. 414,

The University and Small Business Patent Procedures Act

Today the Senate Judiciary Committee is holding its second day of hearings on S. 414, the University and Small Business Patent Procedures Act.

At our last hearing the Committee heard from a number of expert witnesses who testified about the delays and frustrations that many promising inventions face when a small business or university contractor makes a patentable discovery under Federally-supported research and development. The problem in a nutshell is that while the agencies have a horrid record at developing and marketing new discoveries themselves, they are reluctant to part with the patent rights to inventions even when the inventor is willing to undertake the risk and expense of development. The result has been that many good ideas are being drowned in a sea of red tape and uncertainty.

There is now a great deal of concern about the health of American innovation. Newsweek magazine for this week has a cover story entitled "Has America Lost Its Edge?", and there are a number of bills that have been introduced trying to spur American inventiveness. The Federal Government is now by far the largest source of research and development money in the country. Unless good ideas and inventions coming out of this effort reach the marketplace there has been little real gain to the public. The bill that we are considering today would allow universities, small businesses, and nonprofit organizations to retain patent rights to inventions that they make under Government-supported research and development while guaranteeing the rights of the Government to use the invention without the necessity of

paying any royalty fees. The bill would also return money to the Government whenever one of these inventions achieves a certain level of success in the marketplace. Thus S. 414 creates an incentive for the inventor to take the time and effort needed to market new inventions while protecting the legitimate needs of the Government.

The Comptroller General, Mr. Elmer B. Staats, told the Committee on May 16, 1979 that the GAO study of Government patent policy had revealed that there are now a wide variety of policies followed by different agencies. Agencies such as HEW and the Department of Defense which had implemented liberal patent policies regarding universities have now begun to reverse themselves and have instituted a policy of reviewing patent petitions on a case-by-case basis. HEW frequently takes 8 to 15 months to complete this review with no certainty as to who will end up owning the patent. The Comptroller General stated that passage of S. 414 would be a constructive step in ending this uncertainty and making sure that we have the best possible patent policy governing our large research expenditure.

Presidents of three small research companies told the Committee that the confusion and uncertainty that now exists over ownership of patent rights was one of the principal reasons that the innovative small business is reluctant to get involved with agency research programs. Small businesses have proven to be the most innovative segment of the economy. When these innovaters no longer will participate in Government research, the loss is suffered by everyone. The small business witnesses said that a bill like the University and Small Business Patent Procedures Act was essential if the small businessman was to participate in our research effort to the greatest possible extent.

I think that we should all remember that we are still living to a great extent "on Grandfather's money" in that our standard of living is a direct result of the initiatives made earlier in this century by a handful of men and women who had good ideas that they pursued until they had achieved their full potential. The resulting breakthroughs in medicine, communications, and transportation have benefitted all mankind. Still we cannot assume that this rich inheritance will never run out. We must make sure that the great ideas of our own time are given the opportunity to achieve their potential. I do not think that an impersonal Government agency is able to give a new idea the same amount of intense interest and attention as the inventor. The result is that many good ideas taken by the funding agency perish on the shelves of Government because there is no incentive for anyone to invest the time and effort necessary to develop a new discovery.

The witnesses that the Committee has scheduled today should be able to shed some more light on the role of Federal research on innovation, and more specifically, on what the best possible policy would be for determining ownership of resulting inventions. We must insure that good ideas are delivered to the marketplace where they can benefit the public while protecting the legitimate needs of the Government.

There are many indications that America is falling behind its international competition in a number of areas. Ironically, many foreign companies have been able to take new ideas from our research, patent and manufacture them abroad, and then export the resulting products to America. Importation of manufactured goods is now the second largest drain on our

dollar right behind imported foreign oil. Countries such as Japan and West Germany have been able to pay for their oil imports, even though they have fewer natural resources than the U.S., on the strength of their innovative economies. I think that it is time for the Government to stop tying up innovation in red tape and provide incentives for American ideas to be developed here while providing new jobs and benefits for the public which is supporting our research effort. S. 414 is a much needed first step in this direction.