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United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION
WASHINGTON, D.C. 20510

October 11, 1978

ROBO TO INDIANA SMALL BUSINESSMEN and CHAMBER OF COMMERCE jal

Dear Friend:

On September 13, 1978, Senator Dole and I introduced a bill which will cut federal red tape and give a boost to American business -- especially small businessmen -- in developing and benefiting from new technology. The University and Small Business Patent Procedures Act, addresses a very serious problem: Hundreds of valuable medical, energy, and other technological discoveries are sitting unused under government control. The government, which sponsored the research that led to the discoveries, lacks the resources and expertise and even the authority necessary for product development and marketing, yet it has been unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

This legislation is designed to cut through bureaucratic red tape that is strangling innovation. There are now 20 statutes and regulations in effect which give contradictory instructions to the agencies about their ability to grant patent petitions. Sometimes even within the same agency there can be different policies in different departments. The result has been that researchers face a costly maze of contradictory rules, many of which require that the agency must retain patent rights on inventions that it helped to fund.

This bill will allow universities, nonprofit organizations, and small businesses to obtain limited patent protection on discoveries they have made under government-sponsored research if they spend the additional private resources necessary to bring their discoveries to the public. Our experience has shown that unless inventors, universities, small businesses, and the private sector generally are given sufficient incentives to work together and bring inventions to the public, new technology is likely to languish.

The University and Small Business Patent Procedures Act will encourage small businesses, which presently receive only 4% of the government's research money, to become a larger partner in our research efforts. Small business has compiled a very impressive record as the most innovative sector of our economy, and has proven that it is willing to take the necessary risks needed to develop new technologies. Large businesses would also benefit from S. 3496, whether large or small, companies would be eligible to receive licenses to develop and market the new products.

Many important technological discoveries are made each year in federally-supported research. At a time of increasingly strong foreign competition in technological innovation, it is vital that American private enterprise be allowed adequate incentives to develop new technology, new products and new ideas. Unfortunately, government-held patents are not very attractive to the private sector. Presently, less than 4% of the patents held by the government are successfully licensed. The remainder are gathering dust on government shelves. It has been estimated that it costs 10 times as much to develop and market an invention as it did to discover it. Few private investors will commit the large amounts of capitol needed to develop and market a new invention without some type of patent protection for this investment.

I have enclosed a copy of my introductory statement and a description of how the bill would work. There are a number of safeguards built into the bill to protect the legitimate rights of the government to use inventions that it has helped to fund, and even a provision that requires payment back to the government equal to its investment if the invention achieves a certain level of success. So in many ways the ultimate beneficiaries of the policies established by this bill will be the American people.

I think that this is an important start in solving a large problem of lagging technological innovation. I hope that you will join me in supporting it.

Sincerely,

Birch Bayh
United States Senator

Enclosure
(floor statement)