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United States Senate

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

STATEMENT

OF

SENATOR BIRCH BAYH

TO THE

SUBCOMMITTEE ON PATENT AND INFORMATION POLICY

January 24, 1979

America is falling behind in its traditional role of international leadership in technological innovation:

The number of patents issued each year has steadily declined since 1971;

The number of U.S. patents granted to foreigners has risen since 1963 and now accounts for 35% of all patents filed in the U.S.;

Investment in research and development over the past ten years, in constant dollars, has failed to increase;

Importation of foreign manufactured goods are second only to foreign oil imports as the biggest drain on U.S. dollars:

American productivity is growing at a much slower rate than that of our free world competitors;

Small businesses, which have compiled a very impressive record in technological innovation, are receiving a distressingly low percentage of federal research and development money.

President Carter has expressed his concern about these trends by forming the Advisory Committee on Industrial Innovation, of which this Subcommittee is a part.

I am particularly concerned with one problem over which the Subcommittee has given considerable thought: the government's patent policy regarding inventions arising from federally supported research and development. As you know, for the most part the government presently retains patent rights on these inventions and attempts to grant nonexclusive licenses to the private sector to develop and commercialize them. This policy has had stifling consequences. Of the 30,000 patents in the government's patent portfolio, less than 4% are successfully licensed. The private sector simply cannot be expected to spend the millions of dollars required to take a patentable idea or invention from the research stage through development and marketing without the patent protection necessary to give some assurance of return on their investment.

I was very pleased that in your draft report the members of this Subcommittee unanimously believed that patent rights should be left to the private sector whenever possible. I agree with the Subcommittee and will be introducing legislation along with Senator Robert Dole and Congressman Peter Rodino in early February to accomplish these ends.

Our bill, the University and Small Business Patent Procedures Act, will allow universities, nonprofit institutions, and small businesses to retain title to inventions made under government-supported research if they will spend the needed money to develop and market these inventions. Exceptions are made for inventions involving national security and other extraordinary circumstances, but clearly the thrust of the bill is in the direction recommended by the Subcommittee draft report.

Our bill also contains a march-in provision recommended by some members of your Subcommittee to require further licensing by the patent holder if the funding agency has evidence that development and marketing are not proceeding at a reasonable pace. The funding agency would also be granted an irrevocable license to use the invention.

Our approach would leave other contractors, such as large businesses, under the present procedure of petitioning for patent protection on a case-by-case basis.

This bill also would require that the contractor make some effort to pay back the government's investment in the research if the invention reaches a certain level of financial success within 10 years.

Finally, we would establish a program for licensing the thousands of patents held by the agencies.

During my participation in preparing this legislation I have learned of many needless and frustrating delays under the present policy which really is a lack of policy from the legislative point of view. Many petitions for patent rights routinely take months, and some have even taken years, to process. I need not describe those instances to you, but I will only mention that we have allowed needless suffering to persons who might benefit from new drugs due to the inevitable delays of the present system. We have allowed too many money-saving, energy-saving or even life-saving devices to languish. We must now join to assure that this situation is changed.

I have been somewhat surprised and greatly pleased by the bipartisan, broad-based support this bill has received. I think this indicates the concerns of many Senators and Congressmen in restoring the role of American inventiveness at this time, when we need it greatly. I commend you and thank you for your leadership in this area.