Statement of Senator Birch Bayh on S. 414,

The University and Small Business Patent Procedures Act

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

I have become very concerned that the United States is rapidly losing its preeminent position in the development and production of new technologies which historically has been our strong suit. Some examples of this disturbing trend are the following facts:

Importation of foreign manufactured goods are second only to foreign imported oil as the biggest drain on U.S. dollars. In the first half of 1978 we suffered a $14.9 billion deficit on this importation. Countries like Japan and West Germany with fewer natural resources than the U.S. are paying for their imported oil with money that they received from exporting goods.

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

The number of U.S. patents granted to foreigners has risen since 1973 and now accounts for 35% of all patents filed in the U.S.;

Investment in research and development over the past 10 years, in constant dollars, has failed to increase;

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;

The number of patentable inventions made under Federally-supported research has been in a steady decline.

There are a number of theories on the cause of this trend, but one area where progress could be made immediately is with inventions arising from Federally-supported university and small business research.

Presently, there are over 20 different statutes and regulations in existence which govern ownership of inventions that are reported to the Government each year from its research programs. The underlying philosophy of these policies is that the funding agency should retain title to these inventions even if the agency has provided only a small percentage of the funding. Unfortunately, the agencies have had very little success attracting private industry to develop and market these inventions because when the agencies retain the patent rights there is little incentive for any company to undertake the risk and expense of trying to develop a new product.

This problem is especially serious in the field of biomedical research programs where delays by the agencies in granting patent waivers for new drugs and processes have condemned many people to needless suffering. Unless universities and small businesses receive the right to retain the patent on these inventions, valuable discoveries wind up wasting away on the funding agency's shelves, benefiting no one.

The Departments of Energy and HEW frequently take months, and in some cases even years, to review these petitions for patent rights. Many inventions could make significant contributions to the health and welfare needs of our country if they were utilized. When the Government decides to retain patent rights on these inventions there is a very great

chance that they will never be developed. Of the 30,000 patents that the Government presently holds, less than 4 percent are ever successfully licensed. This is very little return on the billions of dollars that we spend every year on research and development.

Another problem that this legislation addresses is the distressingly low percentage of Federal research money that goes to small businesses. The Office of Management and Budget released a study which said that firms with 1,000 employees or less are credited with almost half of the industrial innovations made between 1953 and 1973. Small businesses have been found to get more from each research and development dollar than larger contractors. In light of these facts it is very disturbing to learn that small business receives less than 4% of the Federal research and development expenditure. One major reason that many of these innovative small companies have avoided Federal grants is the uncertainty over whether or not they will be allowed to retain patent rights on resulting inventions. The University and Small Business Patent Procedures Act will end this uncertainty.

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 Federally-supported research and development programs when they are willing to spend the needed money to develop and market these inventions. The bill also protects the legitimate rights of the funding agency to use the invention on behalf of the Government. A section of the bill would also require the patent holder to reimburse the Government whenever a subject invention achieves a certain level of success in the marketplace within 10 years. S. 414 would create for the

first time a uniform patent policy for every agency and thus end the confusion caused by over 20 different, and sometimes even contradictory, policies.

The United States has built its prosperity on innovation. That tradition of unsurpassed innovation remains our heritage, but without continued effort it is not necessarily our destiny. There is no engraving in stone from on high that we shall remain number one in international economic competition. In a number of industries we are no longer even number two. New incentives and policies are needed to reverse this trend. The University and Small Business Patent Procedures Act will be a step in the direction of encouraging innovation and productivity in the United States. I am pleased that 26 of my Senate colleagues have now joined me in support of this important bill.

Today the Committee will hear from a number of witnesses who have had first-hand experiences in research and development and who should be able to shed much light on what would constitute an effective, efficient Government patent policy.

It is in everyone's interest to insure that the fruits of American inventive genius are delivered to the marketplace as quickly as possible, and are not simply left to rot because of indifference or bureaucratic delays.