To: Nels
From: Joe
Re; letter to labor leaders on the patent bill
March 6, 1979

As you know organized labor came out against a title in the contractor approach in awarding patent rights for inventions arising from federally-supported R and D in their report to Asst. Sec. Baruch. In order to try and head off any official opposition to the Senator's bill I think that we should send a letter from the Senator to some key labor leaders explaning the purpose of S. 414 and how it relates to the larger questions of economic growth and creation of new jobs. Barbara Dixon said that she would send me a list of labor groups that would be most receptive in addition to the AFL-CIO.

Dear :

I have been increasingly concerned recently about the problems that the United States is having retaining its traditional leadership in developing and marketing new technologies. I ~~am sure that~~ know we you share a ~~my~~ concern that our balance of trade deficit grows worse year by year, and that the second biggest drain on our dollars, behind imported oil, is foreign manufactured goods which we are importing in ever increasing numbers. Besides accelerating the rate of inflation and further devaluating the dollar, this trend is also manifesting itself at home by restricing the ability of U.S. companies to hire more people, and has even caused many employers to cut back on the numbers of existing workers. ~~employed~~.

~~This is a very complex problem which cannot be solved by simplistic answers, yet~~ I am convinced that one area that has been clearly identified as a contributor to this trend, and to the problem of continued technological innovation generally, is the inefficient

patent policy now governing disposition of patent rights for inventions made each year under Government-supported research and development programs. We have received a very poor return on the billions of dollars ~~that we spend each year~~ 1 part on federal research when many of the most promising inventions are being strangled in a sea of bureaucratic red tape and never reach the marketplace where they can benefit the American people. This bureaucratic red tape occurs because Agencies now insist in most cases on retaining patent rights on any invention reported to them from their research programs. This policy leaves no incentive to the private sector to invest the millions of dollars commonly needed to develop and market a new invention. Many agencies compound this already difficult problem by frequently taking months, and in some cases even years, to process petitions for patent rights that they receive from their research contractors. The existence of 19 different statutes and regulations setting out patent policy for the agencies has insured that only those contractors, such as large businesses, which have large legal staffs can possibly figure out which policy will apply to any given research contract.

This burden is especially heavy on small companies which historically have been the most innovative segment of the business community and also the greatest source of new jobs. A study conducted by MIT concluded that in the 5 year period between 1969 and 1974, "innovative companies", and ~~xx~~ in particular "young technology companies" substantially exceeded their larger, more established rivals in the rates of sales growth, taxes paid, and in the creation of new jobs.

The MIT study showed that these small, high technology companies created new jobs at a compound annual rate of 40.7% as compared to the rate of 0.6% for their larger rivals, and actually created a greater number of jobs than these more established firms. Small companies have also demonstrated their ability to be more productive per research dollar than larger businesses, yet ~~these~~ small companies receive only 3.4% of our annual R and D expenditure. One of the major reasons for this low percentage of participation is that these small companies simply cannot afford to risk losing patent rights on inventions that they might develop under Government-supported research.

Universities conducting important medical research for the Government are frequently frustrated by this patent policy. Many promising discoveries on cancer, for example, have been needlessly delayed while the funding agency pondered how to dispose of their patent rights. The universities are also conducing important research in other areas such as energy, that face the same types of delays and frustrations.

The agencies have also been notoriously unsuccessful in their attempts to license the more than 28,000 patents that they now hold. Private industry feels that receiving a nonexclusive license on these patents is insufficient patent protection to justify the expense and risk of developing new products. The result has been that many promising new discoveries are simply gathering dust on the funding agency's shelves, benefiting no one.

On February 9, 1979 I introduced S. 414, the University and Small Business Patent Procedures Act which is designed to break the

policy logjam causing such inefficiency and waste. Congressman Peter Rodino has introduced the same bill in the House where it is H.R. 2414.

This bill would allow universities, small businesses, and non-profit organizations to retain title to inventions made under Government-supported research if they will spend the needed money to develop and market these inventions. Exceptions would be made for inventions made at a government research facility or for extraordinary invenitons that might arise when it would be in the public interest for the agencies to retain title. Other contractors, such as large businesses, would be left under the present policy of reviewing patent petitions on a case-by-case basis.

S. 414 would also guarantee the agency the right to a nonexclusive, paid-up license so that it could use the invention itself, and would require repayment to the agency equal to its investment in the initial research, if the patent achieves a certain level of success within 10 years. The agency could also require the patent holder to issue more licenses if there was evidence that a good faith effort was not being made to develop and commercialize the patent as quickly as possible.

The University and Small Business Patent Procedures Act sets up for the first time a uniform Government patent policy which will encourage many small businesses and universities to become more involved with our research and development efforts. The bill will establish a program which will attempt to license whenever possible

the patents that are now being held by the agencies.

I think that S.414 is a very carefully crafted compromise between the legitimate rights of the Government to enjoy the benefits of the research that it is helping to support, and the right of the contractor and the public to have new inventions and processes developed and marketed as quickly as possible. With so many companies cutting back on their research while our competitors abroad are redoubling their research efforts, it becomes extremely important that the Government ~~(which is our primary source of research money)~~ has the most efficient patent policy possible. This effort translates into more jobs for the American worker and a higher standard of living not only here, but throughout the world. I hope that you will join with me in supporting this important legislation.

I have enclosed some materials along with a copy of S.414 for your information.

Sincerely

B.B.

Enclosures: bill and mailer