Thanks, Joe
This makes sense
Let's go
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MEMORANDUM

TO: Senator
FROM Joe
DATE: March 27, 1979
RE: Hearings on Patent Bill
COPIES TO: P.A., Tom, Nels, Carol, Rich, Ann H., Leg

The Judiciary Committee has scheduled April 11 as the first day of hearings to be held on your bill, S. 414, the University and Small Business Patent Procedures Act. The bill was held at the full Committee with the agreement that you would chair the hearings. This memo outlines some of the potential problems that the bill will face and some suggestions about potential witnesses for the hearing.

There are now 25 Senators on S. 414 (14 Democrats and 11 Republicans) including the following members of the Judiciary Committee: Senators Dole, Hatch, Mathias, Metzenbaum, Thurmond, DeConcini, Leahy, and Cochran. Because of the great amount of support and interest that has been shown in S. 414 there are a number of individuals and groups that want to tack additional provisions onto the bill. Interestingly, no Senator has indicated opposition to the bill, and Senator Long who has historically opposed similar bills has indicated that while he will not join in support of your bill, he will also not oppose it.

The three most common suggestions for broadening the bill are:

Discuss

1) to include provisions setting up national technology transfer centers to match up new technological innovations with interested industries (Sen. Stevenson will be introducing legislation in this area); what is this?

2) to make grant applications to the agencies confidential (there is evidence that competitors frequently copy promising applications and submit them as original ideas), and what will this do?

3) the desire to expand the scope of your bill so that in addition to covering small businesses, universities, and nonprofit organizations it will also include big businesses.

Attempts to include large businesses under your bill could be very damaging to any chances of enacting legislation. Previous attempts to pass a uniform patent policy have always foundered on this issue. The antitrust community and the consumer groups (in addition to Sen. Long and Sen. Nelson) are very much concerned about attempts to grant patent rights on inventions arising out of Federally supported R and D to large businesses without the greatest amount of scrutiny to study the impact on economic concentration and competiveness. It is precisely because of the fact that you have eliminated big business from your bill and have a pay back provision to the funding agency whenever a patent achieves a certain level of success in the marketplace that S. 414 has received so much support.

Different criteria & pay back for B.B. - if none of the others are interested?

Encouraged by this support, Assistant Secretary of Commerce Jordan J. Baruch is now attempting to draft legislation which would incorporate your approach for the universities and small businesses while trying to include big businesses under some sort of liberalized policy. Such legislation has very little chance of success and could even muddy the waters enough to make passage of your more limited bill more complex. We recommend that you respond to any attempts by the Administration or others to include all contractors under S. 414 by saying that the universities and small businesses have a clearly identified need for a new patent policy. While it might also be true that the policies governing other contractors such as large businesses should be examined, the threat of resulting economic concentration and lessened competition merits a close look which should be given to a separate bill rather than trying to solve all contractors problems at one time.

Previous attempts by Assistant Secretary Baruch to draft comprehensive legislation have met with a storm of protest from within the agencies, and it is unclear whether or not he will be more successful with his most recent effort. Senator Schmitt, while cosponsoring your bill, is also attempting to draft a comprehensive bill.

S. 414 has a new provision that was not in last year's bill which would give Congressional approval for the first time to the regulatory policies now governing big business contractors. This language was suggested by General Electric (the largest patent holder in the U.S.) and with its inclusion G.E. is now enthusiastically supporting your bill, so the bill does have provisions in it which are important to big businesses.

what is this?

In setting up the hearings it seems like a good idea to clearly demonstrate the special problems that universities and small businesses have working under the present patent policies. Therefore we suggest having a panel of university researchers and a panel of small businessmen the first day who have had first hand experience with the present patent policy mess. The Comptroller General could also present the results of an investigation which you asked the GAO to make of the effects of the present 19 different statutes and regulations now setting up the agency's patent policies. This GAO report will document many of the problems that you have mentioned with the present policies and will be very favorable to your bill.

Agree

when do we get this?

Potential witnesses for the research panel could be:

✓ Dr. Salmon of the University of Arizona - who along with his colleague Dr. Hamberger developed what appears to be a revolutionary process for determining what type of chemotherapy treatment that a cancer patient can tolerate by using a blood sample from the patient. This could replace the present trial and error process where patients must actually receive drugs and take the chance of having adverse reactions until the proper treatment is found. Despite promises last year by HEW that the Salmon-Hamberger process would soon be released, after more than a year of study there is still no indication that a determination over ownership of patent rights has been made. Dr. Salmon is extremely angry about this unnecessary delay and has been interviewed about this situation by NBC.

Dr. Baruch Blumberg - received a Nobel prize for his work in developing a hepatits vacine. Manufacture of this vacine in the U.S. was delayed by HEW's failure to award Dr. Blumberg patent rights to the discovery. The Blumberg's vacine was finally patented overseas and subsequently developed in America.

Dr. Hector DeLuca - is very familiar with Government patent policy and all of the resulting confusion and delay. Dr. DeLuca has had a great deal of first hand experience with Government R and D, is a very articulate witness, and is very favorable to your bill. Dr. DeLuca is the chairman of the Department of Biology at the University of Wisconsin which is one of the largest R and D contractors.

The witnesses for the Small Business Panel could be:

Mr. Pat Iannotta - President of Ecolotrol, Inc. which specializes in environmental research. Mr. Iannotta developed a patented process for energy efficient water pollution control which a number of state and local governments were interested in installing. While seeking a needed EPA contract to complete the work, Mr. Iannotta was informed that if he signed the contract he would have to agree to give the agency all of his background material which he had developed himself that led up to the new process. Mr. Iannotta sought to receive similar treatment as Union Carbide had received from the EPA when it received a contract to use their rival process without any loss of background rights and was refused. After two years of negotiation the project fell through.

Dr. Walter D. Syniuta - President, Advanced Mechanical Technology, Inc. Dr. Syniuta's company like most small businessmen with the capability to conduct Government R and D refuses to do so because of the possibility of losing patent rights on any resulting invention and even loss of background rights which led up to the discovery. Dr. Syniuta has previously testified on Government patent policy and can testify that with the enactment of S. 414 many more small businessmen would be able to conduct R and D for the Government.

Mr. Arthur Obermayer - Vice President of the American Association of Small Business Research Companies who can present examples of the experiences that a number of small business researchers have had under Government R and D and understands the importance of your bill.

The Judiciary Committee has also reserved June 5 and 6 for hearings on the patent bill. We have a list of potential witnesses, including President Hansen of Purdue which we will give you in another memo.