Statement on S. 414, the University and Small Business Patent Procedures Act

MR. BAYH, Mr. President, I am pleased to be the author, along with my colleague Senator Dole, of S. 414, the University and Small Business Patent Procedures Act. This bill is designed to cut through the bureaucratic red tape that is presently strangling too many promising inventions. I am pleased that 31 of our colleagues are now cosponsoring this important bill.

S. 414 addresses a serious and growing problem: Hundreds of valuable medical, energy, and other technological discoveries are sitting unused under Government control, because the Government, which sponsored the research that led to the discoveries, lacks the resources necessary for development and marketing purposes, yet is unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

The cost of product development exceeds the funds contributed by the Government toward the initial research by a factor of at least 10 to 1. This together with the known failure rate for new products, makes the private development process an extremely risky venture, which industry is unwilling to undertake unless sufficient incentives are provided.

The problem is substantial in HEW, the Department of Defense, the Department of Agriculture, and the National Science Foundation. But nowhere is the patent situation more disturbing than in the biomedical research programs. Many people have been condemned to needless suffering because of the refusal of agencies to allow universities and small business

sufficient rights to bring new drugs and medical instrumentation to the marketplace.

For example, Department of Energy and Department of Health, Education, and Welfare procedures of reviewing all of the requests for patent rights from universities are resulting in delays of almost 2 years. In many cases these inventions could make significant contributions to the health and welfare of the American people, but are being frustrated by the present patent policy.

The bill that we are considering today strikes a careful balance between the rights of the Federal Government to use for itself and the public good inventions arising out of research that the Federal Government helps to support, and the equally important rights of the inventor and the public to see that the inventions receive their full potential in the marketplace and reach the people they may benefit. This bill will allow universities, nonprofit organizations, and small businesses to obtain limited patent protection on discoveries they have made under Government-supported research, if they spend the additional private resources necessary to bring their discoveries to the public. Our experience has shown that unless inventors, unviersities, 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.

This bill addresses part of a larger problem that I find very disturbing, namely, that America seems to be falling behind in technological innovation and inventiveness.

Evidence is mounting that we are falling farther and farther behind our international competition in a number of areas. Indications of the seriousness of this trend are:

The present U.S. importation of over $6 billion worth of manufactured goods (second only to our importation of foreign oil);

A U.S. productivity rate since 1967 of only 24% (which compares to rates of 105% for Japan, 54% for Italy and France, 39% for Canada, and even 25% for England;

The fact that 35% of all U.S. patents issued now go to foreigners:

And finally the fact that fewer and fewer inventions are being reported to the Government from our multi-billion dollar research and development efforts.

There are, of course, a number of theories which have been offered to explain this situation. Some observers have cited the dropoff in Government supported research, the nature of the modern corporation, changes in lifestyle, the entrance into the work force of inexperienced workers, and overregulation of businesses by the Government. Others have said that this technological lag is merely a misperception, and that new technological developments are being made, but that they are of necessity not as exciting as the unprecedented technological breakthroughs that followed World War II.

I do not wish to speculate on these theories beyond saying that many of our prominent scientists, educational leaders and businessmen believe that this problem is a very real one, one in fact so serious that it

strikes at the traditional heart of the American economy--our ability to adapt to a changing world.

Mr. President, this bill was reported our of the Judiciary Committee on November 20, 1979 unanimously. The recent White House Conference on Small Business adopted the passage of S. 414 as one of its top recommendations to spur small business innovation. President Carter in his innovation statement of October 31, 1979 indicated his support for the concept of this bill.

Passage of S. 414 will be a good first step in addressing the innovation and productivity slump which is of so much concern to the Congress and to the American people.