To: Senator
From: Joe
Re: Talking paper on Innovation and your patent bills
April 25, 1980
cc: Kevin, Mary , Linda, Tom, Eve, David B., Press, Bob, Ann M., Leg, Ind.

Eve asked me to put together a few talking points on innovation and your patent bills for your meetings this weekend.

Innovation facts:

1. Since 1967 the U.S. productivity growth rate has lagged behind every major industrialized free nation except Sweden. Japan's rate was 105%, Italy and France's 54%, Canada's 39%, Great Britian's 25%, the U.S. 24%

2. Our importation of foreign manufactured products is the greatest drain on our dollars after imported foreign oil. We are importing more than $6 billion worth of such goods, which include products such as cars, electronics, and textiles which were traditionally areas of American strength.

3. Foreign inventors now account for 35% of all U.S. patents filed.

4. The U.S. has declined from an 80% share of the world's major innovations prior to 1959 to a 67% share from 1959-64, and to 57% from 1965-73.

5. Small businesses which have accounted for most of the new jobs and one-half of the major innovations since World War II now receive less than 4% of the Federal research and development expenditure

6. In 1971 the U.S. posted its first trade deficit since 1893. Since then we have had only 1 surplus in 1975, which occured when we were in a recession.

Your Patent bills

It has been generally agreed by experts that the present weaknesses

in the U.S. patent and trademark system has contributed to the innovation and productivity lag. Groups like the National Assn of Manufacturers and the National Small Business Association have cited this problem as deterrents to American innovation.

1. The Senate passed on April 23 by a vote of 91-4 your University and Small Business Patent Procedures Act, S. 414. This bill represents the first legislative breakthrough in a 20 year battle to insure that inventions made under federally sponsored research are actually developed and delivered by the public. The bill allows universities, small businesses, and nonprofit organizations-- who conduct most of the nation's basic research where important inventions are most likely to occur-- to own the patent rights to the discovery. The bill also protects the rights of the agency to use these inventions without paying royalties and includes a formula so that money is returned to the government whenever one of these inventions achieves a major success in the market.

This bill along with your patent reexamination bill were adopted by the recent White House Conference on Small Business as one of the top recommendations for improving the innovative climate in the U.S.

2. The Senate passed on March 20 unanimously your patent reexamination bill, S. 2446, which allows the Patent Office to consider many patents that are challanged on the basis that the PTO missed certain pertinent data during the original patent examination. Presently this must be done in the courts at an average cost of $250,000 to both parties in legal fees and years of delay to determine the challanged patent's validity. These costs and delays are often used against small companies and individuals by

larger competitors who want to infringe on valuable patents. Your bill gives patent owners and challangers an inexpensive method of reexamining these patents and will reassure inventors that the costs of litigation cannot be used against them to take away their patent rights.

As mentioned before this was endorsed by the Small Business Conference and was also endorsed by the American Bar Assn and the American Patent Law Assn.

3. You have also introduced legislation that would make the Patent and Trademark Office independent of the Dept of Commerce, S. 2079.

This bill does not create any new bureaucracy, but allows the PTO to function without interference from the Commerce bureaucracy which contributes nothing to its mission.

Every former PTO Commissioner testified in favor of this bill along with representatives of the ABA, American Patent Law Assn, the National Small Business Assn, and every representative of a business who has contacted your office.

It is estimated that the PTO could be made independent for approximately $150,000 which would return millions to the American economy through increased innovation.