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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

April 12, 1979

The Honorable Ernest F. Hollings
Chairman, Subcommittee on State,
Justice, Commerce
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The purpose of this letter is to recommend an adjustment to the Department of Commerce's budget for FY 1980 for the Patent and Trademark Office.

I have been quite concerned that the United States is rapidly losing its preeminent position in international economic competition. The second largest drain on our dollars, behind foreign oil imports, is imported manufactured goods. Many of these goods can no longer be competitively produced in the United States. Indeed, many countries such as West Germany and Japan, which are also oil importers with fewer natural resources than the U.S. are able to afford imported oil because of the strength of their high-technology economies.

At the very time when we should be doing everything in our power to enhance productivity and innovation, the heart of our ability to encourage new inventions -- the patent system -- is receiving inadequate funding. Recent comments that this Subcommittee received from Assistant Secretary of Commerce for Science and Technology Jordan J. Baruch have confirmed this situation.

The Patent and Trademark Office has estimated that its files for every subclass of patents are 2-28% incomplete. Lack of funding has prevented integrity checks from being made on foreign patents in the search files. Indeed, only a small percentage of the patent system is now covered by a security system which insures that patents are not removed from the files. The Patent and Trademark Office is also taking longer to process patent applications, and is unable to hire needed personnel to replace the patent examiners who have left. Furthermore, the passage of the Patent Cooperation Treaty by the Congress has committed the Patent Office to greater involvement in processing foreign patents and is expected to cost $1,084,000 in FY 1980. Yet no additional funding has been provided to help defray this cost.

The result of this situation is that U.S. patents take longer to process and are frequently found to be invalid when they are challenged in court at an average court cost to both parties of over a quarter of a million dollars. Because patent examiners are limited in the amount of time they can spend in searching the files to determine if an invention is patentable, many companies wishing to invalidate a patent hire lawyers to conduct extensive investigations on their own in the search files. These attorneys are able to find references in the patent files that were missed in the hurried search by the patent examiner. Thus courts are now finding about 50% of these challenged patents to be invalid. Budgetary restraints have made it impossible for the Patent Office to hire additional staff and to give new examiners the necessary training before they actually start handling patent petitions. In contrast, many of our foreign competitors place a great deal of emphasis on having adequate numbers of highly trained patent examiners to insure the integrity of their patent systems.

The Patent and Trademark Office has been able to return to the U.S. Treasury 30% of its annual budget from fees collected in patent and trademark applications. In addition to cutting the tremendous costs of litigation, a secure, dependable patent and trademark system would generate more than enough money to offset the amount of additional funding needed. I recommend that the Patent and Trademark Office receive an additional $14,267,000 in funding for FY 1980.

It is false economy of the worst kind to practice budgetary austerity at the expense of innovation which is the foundation for the prosperity that this country has enjoyed for so long. As President Lincoln once said, "The patent system added the fuel of interest to the fire of genius." I think that it would be irresponsible for the present Congress to allow the flame to go out by continually underfunding the Patent and Trademark Office.

Best personal regards,

Sincerely,

Birch Bayh