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Statement of Senator Birch Bayh to the Committees
on the Judiciary and Commerce, on Government Patent Policy
January 25, 1980

One of the greatest threats to our economic (and ultimately political) well-being is the recent alarming slump in American innovation and productivity. Certainly my colleagues who are here today and the representatives of the Administration do not need to be reminded of the statistics that confirm what many of us have been privately fearing -- American industry is simply not keeping up with its international competition in too many fields. While Government patent policy is by no means the only cause of this problem, it is certainly a contributing factor.

As the author along with Senator Bob Dole of S. 414, the University and Small Business Patent Procedures Act, I have become acutely aware of the heavy burden that the present patent policies have placed on the most innovative segment of our economy -- the small businesses. Universities and nonprofit organizations which are now conducting by far the biggest percentage of basic research in this country are also not able to fully explore patentable inventions because of the restrictions and uncertainties arising from current federal patent policies. The harrassment and discouragement of these proven innovators has hurt all of us through lost jobs, delayed or aborted new products, and a worsened inflation rate.

Government patent policy has also become a barrier to increased competition. While small businesses have made over one-half of the most important inventions since World War II and are the leading source of new jobs in this country, they receive less than 4% of our federal research and development contracts. This is not because small companies cannot perform this work, but the denial of patent rights to important inventions

resulting from Government-supported work can be a devastating threat to a struggling small company. The result is that these companies simply cannot afford to take the risk of getting involved with the Government. The recent White House Conference on Small Business adopted as its sixth recommendation out of sixty the enactment of new patent policies as contained in S. 414. We simply cannot afford to wait to address this critical problem.

In the university and nonprofit organization area the present patent policies have had a detrimental effect in many areas, but none more serious than the denial or delay in delivering potentially important medical discoveries to suffering patients. Senator Dole documented many cases where important medical discoveries were delayed for months and even years before any decision could be made by the funding agencies on who should own the patent rights. The real losers in this situation are the American taxpayers who are investing billions of dollars in research, but are being denied the fruits of this labor. Because universities presently conduct 68% of all of the basic research in this country, they must be allowed to fully explore promising new ideas.

Government patent policies have had a detrimental effect on other contractors such as large and medium sized businesses. While the loss of patent rights are usually not as serious to these companies as they are to a small business, they are being prevented from making full use of patentable discoveries that they make while working for the Government.

I agree with President Carter that the solution to this problem lies in a two-tier approach: one patent policy for small businesses, nonprofit organizations, and universities that will both encourage innovation and promote competition, and another policy for the other contractors to

insure their ability to bring new products to the public which is supporting our research and development efforts. The draft legislation that we are considering today is a commendable effort in this direction, but I must say in all candor that I think it is a serious mistake to try and to lump both of these policies under one piece of legislation. Because the formulation of a patent policy covering large businesses is such a complex undertaking and because there is now wide agreement on the needs for changing the present policies regarding small companies and universities, it is simply unfair to force those who problems are so clearly in need of immediate redress to wait until agreement is reached on what to do about the larger contractors. My own experience with the Judiciary Committee, which reported S. 414 out favorably to the Senate by a voice vote, reinforces this view. I am certain that it would have been impossible to have had the same success with a more encompassing bill.

I was quite heartened to see the President state on October 31, 1979 that he supports the thrust of S. 414 and I am looking forward toward working with the Administration to insure its quick enactment.

The efforts of Senators Stevenson, Schmitt, and Cannon to redress the problems of the medium and larger contractors also deserve to be commended. I am certainly willing to join with them in this effort and I feel confident that we will be successful in addressing this more difficult question. We do not need to fear, however, that if all of the problems are not solved in one bill they will never be resolved. The problems of innovation and productivity are so serious that the Congress will be forced to address them for years to come. It is worthwhile to procede with well thought out legislation to remedy the problem.

We are all heading in the same direction, and I feel strongly that by working together and supporting each other's efforts this problem can be solved to everyone's satisfaction.