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DAVID BOIES
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

February 4, 1980

Dear Colleague:

Tomorrow the Senate will begin consideration of S. 414, the University and Small Business Patent Procedures Act. This bill allows University, nonprofit organizations, and small businesses to retain patent ownership to inventions that they make under Federally supported research and development. There will also be an attempt to alter this carefully constructed bill with an amendment to broaden its coverage so that it would give patent rights automatically to any Government contractor--including dominant, big businesses. The sponsors of S. 414 will vigorously resist this amendment for the following reasons:

1. Even though small businesses have a proven record for developing more new inventions than any other sector and have been the most reliable creator of new jobs, the Government agencies have a history of discriminating against these companies precisely because of their size. Passage of S. 414 will enable these small companies to fully participate in our research and development efforts.

2. By far the largest percentage of basic research is performed by universities, nonprofit organizations, and small businesses covered under the provisions of S. 414. Basic research is precisely the area where important inventions are most likely to be made.

DOD routinely gives big business patent rights

3. Approximately 30% of Government research and development expenditures go to universities, nonprofit organizations, and small businesses. The Department of Defense (which accounts for 50% of expenditures) routinely gives its contractors--mainly big businesses-- full patent rights. Most of the remaining 20% not covered under DOD or S. 414 is research done by the civilian agencies (such as Department of Energy and HEW) dealing in areas where there are already problems of economic concentration by large companies. Acceptance of a big business amendment on S. 414 could have very serious antitrust consequences. This is too important to be accepted on the floor-- without anyconsideration by the Judiciary Committee.

4. S. 414 is not an "anti-big business" bill. The legislation creates a two-tier patent policy recognizing the needs of small businesses, universities, and nonprofit organizations and merely requiring that the agencies follow their present policies for the other contractors.

There will be many instances where there is nothing wrong with allowing big business contractors to retain title to inventions that they make when working for the Government--S. 414 merely requires that the agencies take a look to make sure that there are no adverse effects on competition.

In summary, S. 414 was drafted precisely because the present patent policies are unfair to small businesses, universities, and nonprofit organizations. The Senate Judiciary Committee approved this bill unanimously on November 20, 1979 with the understanding that its coverage would be limited. The problem of big business contractors is simply too important to be considered in the limited time available on the floor. The acceptance of this amendment would also be a slap in the fact to those whose problem deserve immediate redress-- universities, small businesses, and nonprofit organizations.

We urge you to join with us in opposing any attempt to amend S. 414.

Sincerely,

Birch Bayh

Gaylord Nelson

Bob Dole