

News from Birch Bayh

for further information—phone (202) 224-5623
in Indiana phone (317) 269-6240

FOR RELEASE: FOR IMMEDIATE RELEASE
50 - 78

WASHINGTON, D.C., SEPTEMBER 14 -- Within hours of the introduction of legislation aimed at cutting federal red tape surrounding the granting of patent rights for medical research and other technological breakthroughs developed on college campuses around the nation, it has been learned that the U.S. Department of Health, Education and Welfare (HEW) has ordered action on 30 pending patent rights petitions by the end of business today.

Senator Birch Bayh (D.-Ind.), co-sponsor of the bill introduced along with Senator Robert Dole (R.-Kan.) yesterday, said he is extremely pleased that HEW has reacted so promptly to the intent of the new legislation.

Bayh, Dole and 11 other Senators are among the original sponsors of S. 3496--the University and Small Business Patent Procedures Act--aimed at rectifying current procedures which prevent universities and small businesses from obtaining patent rights on inventions if any of the research leading to the invention was supported by federal money.

"I commend Secretary (Joseph) Califano for moving so quickly to redress some of the bureaucratic entanglements that have prevented many new and promising inventions and breakthroughs in medical and scientific technology from being made available to the American public," Bayh said. "By this action, the problem is not solved, but a good part of the current logjam will be relieved."

HEW had been holding nearly 30 promising inventions and technological developments in the medical research field on its shelves, pending departmental patent review action. Government-wide, approximately 28,000 patents are now sitting on government shelves, Bayh said, adding that untold thousands of other developments have not been patented by the government, but rather have gone unused or underutilized simply because no exclusive rights could be obtained during the critical developmental period.

Bayh attributed the problem--and Califano's prompt action today--not to a deliberate recalcitrance on the part of HEW or any federal agency to act, but rather to the lack of Congressional direction in this area in the past.

"The Secretary's action dramatizes more clearly than anything the strong and abiding need for Congressional action on the legislation which Senator Dole and I have introduced," Bayh said. The Hoosier Democrat predicted Senate approval of the bill early next year.

"The problem, very simply, is the present policy followed by most government agencies of retaining patent rights on inventions," Bayh said. He noted government sponsored research is often basic rather than applied research. Therefore, many of the resulting inventions are at a very embryonic stage of development and require substantial expenditures before they actually become a product or applied system of benefit to the public.

"It is not the government's responsibility--or indeed, the right of government--to assume the commercialization function," Bayh pointed out. "Unless private industry has the protection of some exclusive use under patent or license agreements, they cannot afford the risk of commercialization expenditures. As a result, many new developments resulting from government research are left idle."

"The bill Senator Dole and I have introduced will allow universities, non-profit organizations and small businesses to obtain limited patent protection on discoveries they have made under government-supported research, if they spend additional private resources necessary to bring their discoveries to the public," Bayh said. "Our universities and small businesses have a proven capacity to develop the sort of bold, new inventions that our country needs to maintain its leadership in the world economic community. This bill provides a careful balancing of the rights of the federal government to use for itself and the public inventions arising out of research that it helps to support, and the equally important rights of the inventor and the people to see that the inventions attain their full potential.

(continued overleaf)

Bayh said an important provision of the bill will allow the government to recoup its investment in research projects. Under this "pay-back" provision, the federal government would be reimbursed for its research expenditures out of royalties or income in excess of a fixed figure.

"At a time when we want to be careful about how we utilize our hard-earned tax dollars, it seems to me that it makes good sense to have the federal government's investments in research projects pay off," Bayh said. He said too many research dollars now go down the drain because a complex welter of government regulations keep innovative developments from realizing their full potential in the marketplace.

Bayh cited a number of statistics which he said clearly demonstrate the patent problem. The number of patents issued to American inventors has declined year by year since 1971, he noted, adding that during the same time, the number of United States patents granted to persons other than Americans has increased. He went on to say that invention disclosures and patents resulting from federally-funded research and development have also decreased steadily since 1970.

"I have no doubt that one major reason for this decline is the fact that patents have been very difficult to obtain under our existing federal policy," Bayh said. "The incentive for disclosure of inventions is reduced if the inventors conclude the commercialization of the invention will be impossible because no patent will be issued."

The Bayh-Dole bill is expected to be referred to the Senate Judiciary Committee.

- 30 -