Dear Colleague: Draft

We plan to introduce the enclosed "University and Small Business Research Utilization Act of 1978" and seek your support as a cosponsor. The purpose of the bill is to provide universities and small businesses with patent rights to inventions made under government grants and contracts. This limited form of protection is a prerequisite for making government-supported inventions available to the public.

If an invention made with government funds under university auspices is to reach the public, a collaboration with the private sector for purposes of developing and marketing the invention must take place. Unfortunately, such cooperative ventures have been thwarted by the government's refusal to relinquish ownership of invention rights. Similarly, small businesses lack the financial resources and market power to develop government-supported inventions and therefore require the incentive and shield of patent rights.

The consequences of our failed government patent policy have not gone unnoticed. In the energy area, the barriers to participation by the most innovative private firms and universities are now coming to light. The bureaucratic delays of case-by-case review of each patent application in the Department of Energy, now running almost two years, have brought segments of its commercialization efforts to a virtual standstill. In addition, DOE's general policy of taking ownership of all inventions acts as a significant deterent to the participation of many of our countries most innovative scientists in high-technology industries.

But nowhere is the patent problem more disturbing than in the biomedical research programs. Many people have been condemned to needless suffering because of the refusal of agencies to allow universities and small businesses sufficient rights to bring new drugs and medical instrumentation to the marketplace. The exact magnitude of this situation is unknown, but we are certain that the cases we have uncovered to date are but a small sample of the total damage that has been done and will continue to be done if the Congress does not act.

We believe that the bill we plan to introduce will provide the proper incentives necessary to induce private development of useful inventions derived with government support. This legislation will benefit consumers, labor, and industry alike by bringing improved products to the market; by stimulating increased competition, economic growth, and job expansion; and by strengthening our small business enterprise. Rather uniquely this can be accomplished at no cost to the taxpayer.

Inventions derived from government sponsored research are most often unintended byproducts of the program and therefore exist in an embryonic stage of development. Consequently, if the innovation is ever to be developed for public use, private sector involvement is imperative. The cost of product development exceeds the funds contributed by the government toward the initial research by a factor of at least 10 to 1. This, together with the known failure rate for new products makes the private development process an extremely risky venture. Thus, it is not difficult to understand why industry will not underwrite the development process unless sufficient incentives are provided.

Science Magazine described the dilemma as follows: "We see a prodigious R & D enterprise, fueled by tax dollars, constrained from diffusing its results because of a public policy barrier. Throughout the enterprise, discoveries sit stranded and aging. Meanwhile, we search for clues to what is wrong with U.S. technological innovation, and how it is that foreign industry can undercut American competition and employment." The primary policy barrier identified in the Science article is the federal government's reluctance to grant patent rights.

We believe it is time to overcome this primary barrier to commericialization and maximize the benefits anticipated from our federal R & D effort. The Congress must face this issue squarely and establish a federal patent policy that will encourage the movement of government supported inventions to the marketplace. To this end we plan to introduce the "University and Small Business Research Utilization Act of 1978" and seek your support as a cosponsor.

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