STATEMENT OF SENATOR ROBERT DOLE ON

INTRODUCTION OF UNIFORM PATENT PROCEDURES ACT OF 1983

MR. PRESIDENT:

I AM PLEASED TO SEND TO THE DESK FOR APPROPRIATE REFERENCE, ON BEHALF OF MYSELF AND SENATORS LAXALT DECONCINI , THE "UNIFORM PATENT PROCEDURES ACT OF 1983". THIS LEGISLATION IS DESIGNED TO ENCOURAGE THE COMMERCIALIZATION OF INVENTIONS CREATED PURSUANT TO RESEARCH AND DEVELOPMENT WORK SPONSORED BY THE FEDERAL GOVERNMENT UNDER GRANT OR CONTRACT; AS SUCH, IT IS A DIRECT RESPONSE TO THE CHALLENGE POSED TO AMERICA'S ECONOMIC FUTURE BY FOREIGN TECHNOLOGICAL COMPETITION.

AS WE ARE ALL PAINFULLY AWARE, THE LEAD THAT THE UNITED STATES HAS ENJOYED OVER THE PAST THIRTY YEARS IN TECHNOLOGICAL INNOVATION IS UNDER INCREASING JEOPARDY AS OUR INTERNATIONAL COMPETITORS DEVELOP EXPERTISE IN THE RESEARCH AND DEVELOPMENT SKILLS ESSENTIAL TO THE CREATION OF NEW, HIGH TECHNOLOGY INDUSTRIES. THE LAST TEN YEARS, IN PARTICULAR, HAVE WITNESSED A STEADY EROSION OF OUR COMPETITIVE POSITION IN A NUMBER OF IMPORTANT FIELDS OF ENDEAVOR, INCLUDING AUTOMOBILE MANUFACTURING, ELECTRONICS, AND STEEL PRODUCTION. WHILE WE EMBRACE THIS COMPETITION AS HEALTHY AND TO BE DESIRED, WE MUST NEVERTHELESS ENSURE THAT OUR GOVERNMENT'S POLICIES ENCOURAGE -- NOT DISCOURAGE -- THE DEVELOPMENT AND MARKETING OF INVENTIONS MADE BY AMERICAN ENTREPRENEURS.

WE HAVE HEARD A LOT OF TALK LATELY ABOUT THE NEED FOR AN "INDUSTRIAL POLICY". TO DATE, MOST OF THIS TALK HAS CENTERED ON PROPOSALS THAT I BELIEVE ARE UNWORKABLE AT WORST AND HIGHLY SPECULATIVE, AT BEST -- SUCH AS THE CREATION OF AN "INDUSTRIAL PLANNING BOARD" THAT WOULD DIRECT GOVERNMENT ASSISTANCE TO "WINNING" INDUSTRIES.

YET, THERE ARE CONCRETE, PROGRAM-SPECIFIC MEASURES THAT CAN BE TAKEN NOW THAT WE KNOW WILL ENHANCE AMERICA'S INDUSTRIAL COMPETITIVENESS. ONE OF THOSE MEASURES -- EMBODIED IN THE BILL INTRODUCED TODAY -- WOULD BE TO UNIFY, AND SIMPLIFY, THE PATENT PROCUREMENT POLICIES OF FEDERAL AGENCIES THAT SPONSOR RESEARCH AND DEVELOPMENT WORK UNDER FEDERAL GRANTS AND CONTRACTS.

THE BILL IS MODELED AFTER LEGISLATION THAT FORMER SENATOR BAYH AND I SPONSORED IN THE 96TH CONGRESS, THE UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT OF 1980. THAT LANDMARK LEGISLATION REFORMED AGENCY PATENT PROCUREMENT PROCEDURES THAT APPLY TO RESEARCH AND DEVELOPMENT CONTRACTS WITH UNIVERSITIES AND SMALL BUSINESSES IN ORDER TO MAKE POSSIBLE GREATER COMMERCIALIZATION OF THE BREAKTHROUGH INVENTIONS THAT OFTEN RESULT FROM SUCH ARRANGEMENTS. PRIOR TO THE PASSAGE OF THAT BILL (NOW P.L. 96-517) , UNIVERSITY INVENTION DISCLOSURES HAD SHOWN A STEADY DECLINE. NOW, SUCH DISCLOSURES ARE UP, UNIVERSITY AND INDUSTRY COLLABORATION IS AT AN ALL TIME HIGH, AND MANY NEW TECHNOLOGIES (SUCH AS THE RECENT ADVANCES IN GENE ENGINEERING) ARE CREATING NEW OPPORTUNITIES FOR ECONOMIC ADVANCEMENT WHILE IMPROVING THE QUALITY OF LIFE.

WHAT THE 1980 LAW ACCOMPLISHED FOR UNIVERSITIES AND SMALL BUSINESSES, THIS NEW LEGISLATION WOULD ACCOMPLISH FOR ALL CONTRACTORS WITH THE GOVERNMENT, REGARDLESS OF SIZE. IT WOULD END, ONCE AND FOR ALL, THE FRUSTRATING BUREACRATIC MAZE WHICH HAS HINDERED THE RETENTION OF PATENT DISCOVERIES BY THE PRIVATE SECTOR AND THEREBY INHIBITED THE COMMERCIALIZATION OF THOSE DISCOVERIES. WITH THE GOVERNMENT NOW FUNDING APPROXIMATELY SEVENTY PERCENT OF THE BASIC RESEARCH DONE IN THE UNITED STATES, WE CAN NO LONGER TOLERATE THE ABYSMALLY LOW RATE OF COMMERCIALIZATION THAT ACCOMPANIES FEDERAL OWNERSHIP OF NEW INVENTIONS. FOR EXAMPLE: COMPARED TO A LICENSING

RATE OF 33% FOR UNIVERSITY DEVELOPED INVENTIONS, THE GOVERNMENT HAS LICENSED LESS THAN 4% OF INVENTIONS OWNED BY IT TO THE PRIVATE SECTOR FOR COMMERCIAL USE. THIS IS PRIMARILY BECAUSE OF CHAOTIC AND INEFFICIENT AGENCY PATENT PROCUREMENT POLICIES THAT STRANGLE INNOVATION WITH RED TAPE.

THE BILL I SEND TO THE DESK WOULD ELIMINATE THIS WASTE BY ALLOWING ALL CONTRACTORS CLEAR OWNERSHIP OF THE INVENTIONS THEY MAKE UNDER GOVERNMENT RESEARCH AND DEVELOPMEN CONTRACTS AND GRANTS, WHILE PROTECTING THE LEGITIMATE RIGHTS OF THE AGENCIES TO USE THE DISCOVERIES ROYALTY FREE. IN THIS WAY, IT WOULD ENCOURAGE THE PRIVATE MARKETING OF NEW DISCOVERIES AND THUS STIMULATE INNOVATION. OF COURSE, THE AGENCIES WOULD HAVE THE POWER TO REQUIRE DELIVERY OF TITLE TO PATENTS TO THE GOVERNMENT WHERE SPECIAL CIRCUMSTANCES INDICATE THAT SUCH ACTION IS IN THE PUBLIC INTEREST.

THIS LEGISLATION IS THE END RESULT OF A TWENTY-FIVE YEAR EFFORT TO DEVELOP A UNIFORM, CONCISE GOVERNMENT PATENT POLICY. IT WOULD REPLACE THE AGENCY-BY-AGENCY APPROACH WHICH PREVAILS TODAY WITH ONE, SIMPLE PROCUREMENT POLICY THAT WOULD EMPHASIZE PRIVATE DEVELOPMENT OF NEW INVENTIONS WHEREVER FEASIBLE. RATHER THAN ATTEMPTING TO CREATE YET ANOTHER BUREAUCRACY DIRECTING INDUSTRY, IN WHICH POLITICS RATHER THAN ECONOMICS WOULD INEVITABLY BE THE PREDOMINATE CONCERN, WE SHOULD LET THE PRIVATE ENTERPRISE SYSTEM DO WHAT IT DOES BEST -- PRODUCE NEW PRODUCTS AND JOBS THAT THE PUBLIC WANTS AND NEEDS. THAT IS WHAT THIS BILL WOULD DO.

MR. PRESIDENT, I SEND TO THE DESK FOR INCLUSION IN THE RECORD AT THE CONCLUSION OF THESE REMARKS A BRIEF SUMMARY OF THE BILL'S PRINCIPAL OBJECTIVES, A SECTIONAL ANALYSIS, AND THE TEXT OF THE LEGISLATION. I ASK THAT THESE MATERIALS BE PRINTED

IN FULL FOR THE USE OF MY COLLEAGUES. AS A MEMBER OF THE JUDICIARY SUBCOMMITTEE ON PATENT, COPYRIGHT, AND TRADEMARK LAW, I WILL BE WORKING CLOSELY WITH THE CHAIRMAN OF THAT SUBCOMMITTEE, SENATOR MATHIAS, IN ORGANIZING HEARINGS UPON THE LEGISLATION AND I WILL BE WORKING DILIGENTLY FOR EARLY ACTION UPON IT IN THE NEXT SESSION OF THIS CONGRESS.

THANK YOU, MR. PRESIDENT.