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'PUBLIC THE VICTIM' FOR LACK OF LIMITED PATENT RIGHT POLICY, DOLE SAYS

WASHINGTON -- Sen. Bob Dole (R-Kan.) said today that the American public suffers because of the government's current patent policies, which "act to stifle the development and marketing of inventions emanating from federally funded research." Dole made his statement during hearings on the University and Small Business Patent Procedures Act in the Judiciary Committee's subcommittee on constitution. Dole along with Sen. Birch Bayh (D-Ind.) are original sponsors of the bill.

The bill was introduced last fall following Dole's charges that the Department of Health, Education and Welfare was suppressing lifesaving drugs and medical devices developed under support from the National Institutes of Health. He stated that HEW's refusal to relinquish ownership of inventions developed by university scientists with NIH support "precludes the possibility of these drugs and medical devices ever reaching the public." As a result of Dole's actions, some of the inventions in question were freed for further development. But an HEW patent counsel who cooperated with Dole aides in formulating a new patent policy lost his department job as a result.

Following is Sen. Dole's hearing statement:

"Mr. Chairman, the present patent policy generally encourages retention by the government of rights to inventions it sponsored. This policy has resulted in a reluctance by universities and industry to invest the necessary funds for the development and marketing of inventions emanating from federal funded research. This is understandable in view of the fact that the development process is not only risky but expensive, and estimated to cost ten times the cost of the initial research.

"By obstructing patent rights and innovations, the government increases the factor of uncertainty in an already uncertain area, that of technology end result. By denying the modicum of protection that the granting of patent rights for a limited period of time would afford, the government removes the incentive that would stimulate the private sector to develop and market inventions.

IMPACT OF FEDERAL POLICY

"The effect of this policy is twofold, bearing on the consumer as well as on the economy in general. In both cases, the public is the victim. When large amounts of taxpayers' money are directed to the research field, the public expects and deserves to reap the benefit of its investment in the form of products available for its consumption. When this fails to materialize, it is obvious that the government has reneged on its promise. This is evidenced by the fact that, of the 28,000 inventions funded by the government, only about 5% have been used.

"The damaging impact of the federal patent policy on the economy is dramatic. That we have lost our leadership role to Japan in the fields of electronics and shipbuilding is no accident. Without short-term exclusive rights, small firms cannot take the risk of bringing innovations to the commercial market, but large foreign firms can and are doing so, with ideas gleaned from U.S. funded research. That the richest nation on earth has a trade deficit with Japan amounting to $13 billion leaves room for reflexion, when one considers that fact that Japan has no natural resources on her mainland. Our annual growth is 3% as opposed to 8% in Japan. Our newly established ties with China make the People's Republic a candidate for emulation of the Japanese example. With a population of 900 million people, through the potential use of U.S. technology to which its access is now guaranteed, China could become a most formidable competitor.

"The development of technological innovation by government and industry in countries such as Japan and Germany, is a contributing factor in their dominance of world trade.

WHAT IS THE ANSWER?

"Protectionism is not what I am advocating. Such a theory would be counterproductive and one I do not adhere to on general principles. What I am rather suggesting is that the answer to foreign competition lies neither in an increase of export subsidies, nor in an increase of tariffs, but in an increase in productivity. I believe that the protection that patent rights for a limited amount of time would guarantee to American business would be a giant step towards providing incentives for greater productivity.

"Our economy is one which has always run on America's innovative genius. This resource must not be allowed to waste away on account of unnecessary delays and red tape. Complex rules and regulations devised by federal agencies are detrimental to stimulating productivity and enterprise. They are particularly harmful to small businesses from which, traditionally, innovative and creative programs have emanated. In the field of medical innovation, the obstruction of patent rights by federal agencies is an extremely serious problem. Indeed, when medical inventions, offering potential cures for diseases are withheld, it is the very lives of Americans which are affected.

"The almost adversarial relationship that now exists between business and government must be replaced by a true and genuine partnership, a partnership in which the government will act as impresario in bringing industry and universities together with new fields of knowledge, and their practical implementation.

GOAL OF LEGISLATION

"The University and Small Business Patent Procedures Act that Senator Bayh and I have introduced would establish a uniform policy, guaranteeing rights for a limited period to inventions made under federally sponsored research. Such a policy would help promote the utilization of inventions and would encourage the participation of contractors in government sponsored R & D. By doing this, the public investment in R & D would be protected, and the public interest would be served, according to the direction given by the Constitution in Article One, Section Eight.

"Before concluding, I should like to ask that the text of an article published in the Washington Post on April 8, 1979, titled Patent Bill Seeks Shift to Bolster Innovation be inserted for the Record, following the text of my statement.

business, government