

To: Senator  
From: Joe *File*  
Re: Patent Update  
June 2, 1980

cc: Kevin, Mary, Linda, Tom, Eve, David B, Press, Bob, Ann M, Leg, Ind

Tom asked me to provide you with an update on your patent bills in preparation for your meeting with a representative from Upjohn tomorrow.

Patent Extension- He will probably be interested in this. As we told you this morning you have been asked to introduce legislation that would add a maximum of 7 years onto the life of a patent that has been delayed before a regulatory commission before a product can be marketed.

It frequently takes 10 years before a drug can obtain approval from the Food and Drug Administration before it can be marketed. This delay significantly lowers the life of the patent. This severely limits the ability of the patent holder to market the invention before the patent expires.

There is general agreement in the patent community (small businesses and large) that this is unfair. I have suggested introducing a draft bill this year with hearings and passage hopefully next Congress. Kastenmeier is considering adding this onto a omnibus patent bill in his Subcommittee and trying to move it. As I told you today I think that this is a bad strategy that could endanger the other patent bills that you have gotten through the Senate. Kastenmeier will be holding markups on June 16 and 24.

University and Small Business Patent Procedures Act- Passed the Senate April 23 by a vote of 91-4. Kastenmeier is toying with the idea of going with the Administration's bill which gives patent ownership to small businesses and universities like your bill, but also gives large companies a limited exclusive license. This approach is not acceptable to Sen. Long or to Senators Stevenson and Schmitt who want big businesses to get full patent title like small companies. S. 414 would be able to pass the House easily by all accounts and has been reported out of the House Small Business Committee.

Patent Reexamination- S. 2446, your bill, passed the Senate unanimously on March 20, 1980. Again there is an Administration version of this bill although it does not significantly differ from your bill. Kastenmeier is considering adding this along with the Administration's patent policy bill, patent extension, and an increase in patent and trademark fees onto one big patent bill in his Subcommittee. The proponents of reexamination along with the Bayh/Dole patent policy bill are opposed to this.

Independent Patent and Trademark Office Act - S. 2079 is pending in the Senate Governmental Affairs Committee with a sequential referral to Judiciary. Ribicoff has been very reluctant to do anything with this although he did indicate a willingness to move the Patent and Trademark Commissioner up to an Assistant Secretary of Commerce with direct contact with OMB and the Congress. This is an improvement, but certainly a lot less than is needed.

Kastenmeier has indicated that he has been impressed by the need for helping out the Patent and Trademark Office. There is the possibility that this might be added onto his omnibus patent bill.

As I told you the supporters of your bills are very concerned about adding together all of these bills and then throwing in the patent extension bill. Kastenmeier has been receiving a lot of heat from the Commerce Department to move the Administration's patent policy bill and he seems to be leaning in that direction. The small business and universities along with the supporters of reexamination are all urging Kastenmeier to report out separate bills.

You have also written to Sen. Hollings on Appropriations asking for an additional \$2.1 million for the Patent and Trademark Office. I have attached a copy of your letter to Sen. Hollings describing this amendment.