

October 14, 1980

TO: Senator

FROM: Joe

RE: Patent Information

COPIES: Kevin, Mary, Linda, Tom, Eve, David B., Press, Bob, Ann M., Leg. (2), Indiana Dept., Tim

Ann Church said that you are to be interviewed on Thursday concerning your efforts in the patent field. Below is an update of this issue:

GENERAL

Few problems have caused more concern among economists than the continued innovation and productivity slump that has plagued American industry in recent years. While there are many diverse causes of this problem, one factor that has been identified as contributing to this slump is the present weakness of the United States patent and trademark system. This system has become a dead weight tied around the legs of innovative companies.

Some indications of the seriousness of this situation are:

-- Present U.S. importation of over \$6 billion worth of manufactured goods. This is second only to our importation of foreign oil.

-- A U.S. productivity rate since 1967 of only 24%. This compares to rates of 105% for Japan; 54% for Italy and France; 39% for Canada and 25% for England.

-- Currently 35% of all U.S. patents go to foreigners.

You have taken the lead in Congress in addressing this issue. After holding a series of public hearings on this topic you introduced several pieces of important legislation designed to modernize and streamline our patent system.

BIRCH BAYH LEGISLATION

S. 414- Bayh-Dole University and Small Business Patent Procedure Act-- replaces the present 22 or more contradictory federal patent policies concerning ownership of inventions made under federal grants or contracts with a uniform policy for universities, small businesses, and nonprofit organizations. S. 414 allows these contractors to own these inventions and provides that if they achieve a certain level of success in the marketplace that the Government will share in the profits.

S. 414 passed the Senate on April 23, 1980 by a vote of 91-4. Cited with the Bayh Re-examination bill as one of the most important pieces of legislation now before the Congress by the White House Conference on Small Business.

Quayle co-sponsored the companion in the House Small Business Committee which was favorably reported. Now pending in House Judiciary Committee.

Re-Examination (Bayh bill S. 1679 which passed the Senate unanimously as S. 2446 March 30, 1980).

This bill provides that when the Patent Office misses pertinent printed material (such as previously filed patents or professional journals) that call an issued patent's validity into question that the questioned patent can be "re-examined" by the Patent Office. Now such cases must be litigated at a cost to both parties of \$250,000 and take years to complete. Re-examination can be accomplished for \$1,000 to \$1,500.

This is very important to all patent holders (small companies and big like Eli Lilly) and was endorsed by the White House Conference on Small Business, the American Bar Assn, and the American Patent Law Assn.

Independent Patent and Trademark Office Act- Bayh bill S. 2079--

Because of overwhelming evidence that one of the basic problems in the patent and trademark system is the indifference of the Commerce Department to the Patent and Trademark Office this bill would make the PTO an independent agency.

The bill does not create any new bureaucracy and would have a minimal cost (probably around \$100,000), the returns to American industry from a more efficient Office would be enormous.

Extremely popular bill-- endorsed by the ABA, American Patent Law Assn, U.S. Trademark Assn, National Assn of Small Businesses.

Bill pending in Senate Governmental Affairs Committee with sequential referral to Judiciary. Companion being considered by House Judiciary Committee with a good chance of success.

Patent-Term Restoration Act - S. 2892-

Many products-- like medicines, pesticides--face long delays before regulatory agencies like EPA and Food and Drug Admn before they can be marketed. Frequently these delays can take 8- 10 years before testing is completed. This counts against the 17 year life of the patent.

Bayh bill would allow products that pass this regulatory review to apply for a restoration of up to 7 years of the patent's life to protect the inventor's rights.

Hearings will be held next year, bill was introduced as a draft bill this Congress.