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CONGRESSIONAL RECORD—SENATE

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budget is a study of the 3-year trend, from fiscal 1979, which ended last September 30, through fiscal 1981, which will complete the 10 of next year.

In foreign economic aid, spending in 1979 was $4.7 billion. The President proposes $6.2 billion for 1981. This is an increase of 32 percent.

The administration's juggling has boosted fiscal year 1980 economic aid spending by more than $450 million over its earlier estimates, which has the effect of making aid for 1980 look smaller, but the truth about sharply escalating foreign aid giveaways emerges by looking at the 1979 to 1981 pattern—an increase of almost one-third in spending.

The administration also wants to eliminate certain pledges to the big international banks from the appropriations process. Thus, $1.1 billion in pledges to the development banks would simply disappear from the budget for 1981.

In another budgetary dodge, the administration produces an artificial $1.2 billion in aid spending reductions for 1981—again reducing the increases for 1981—by slowing receipts in the military sales trust fund.

In the area of budget authority, we find that new commitments of spending for bilateral economic aid will rise by more than $500 million from 1980 to 1981, an increase of 25 percent.

The administration's foreign aid budget is deceitful. I urge the Committee on Budget, Foreign Relations, and Appropriations to examine it with great care.

The Congress must not be tricked into approving new billions for foreign aid at a time when continuing high inflation demands that we exercise restraint.

Mr. BAYH. Yes.

Mr. BAYH. I am glad to Mr. BYRD. This will allow me to put in a quorum call.

Mr. BAYH. Yes. Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Reserving the right to object, it is my understanding the balance of the previous unanimous-consent request to the quorum call is in order.

Mr. ROBERT C. BYRD. Yes. That is correct.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Stevenson-Schmitt amendment extend the amendment not be called up until tomorrow.

I suggest the absence of a quorum.

I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 515, S. 414.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 414) to amend title 35 of the United States Code, to establish a uniform Federal patent procedure for small businesses and nonprofit organizations, to create a consistent policy and procedure concerning patentability of inventions under Federal assistance, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

"That this Act may be cited as the "University and Small Business Patent Procedures Act."

SEC. 2. (a) AMENDMENT OF TITLE 35, UNITED STATES CODE, PATENTS.—Title 35 of the United States Code is amended by adding after chapter 17, a new chapter as follows:

"CHAPTER 18.—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE"

"Sec.

200. Policy and objective.

201. Definitions.

202. Disposition of rights.

203. March-in rights.

204. Return of Government investment.

205. Preference for United States industry.

206. Confidentiality.

207. Uniform clauses and regulations.

208. Domestic and foreign protection of federally owned inventions.

209. Regulations governing Federal licensing.

210. Restrictions on licensing of federally owned inventions.

211. Precedence of chapter.

212. Relationship to antitrust laws.

1. Policy and objective.

"It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research and development efforts to promote collaboration between commercial concerns and nonprofit organizations, including universities, to encourage maximum participation of small business firms in federally supported research and development efforts, and to promote the free competition and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government retains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse of unreasonable use of inventions; and to minimize the costs of administering policies in this area."

(1) Definitions

"As used in this chapter—

(a) The term 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of this title 5, United States Code.

(b) The term 'funding agreement' means any contract, grant, or cooperative agreement entered into between any Federal agency and any person for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or sub-contract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(c) The term 'contractor' means any person that is a party to a funding agreement.

(d) The term 'invention' means any invention or discovery which is or may be patentable or otherwise protectable under this title.

(e) The term 'subject invention' means an invention or discovery which the Federal agency will either not use or have placed on an experimental, developmental, or research work program or an inventory of work in progress, or a patent application for an invention which has been reported to the Federal agency, or subject to an assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement, as herein defined.

(f) The term 'practical application' means to manufacture in the case of a commercial product, or to practice in the case of a process or method, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized, in whole or in part, for purposes which are commercially reasonable.

(g) The term 'made' when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(h) The term 'small business firm' means a small business concern as defined at section 2 of Public Law 85-596 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(i) The term 'nonprofit organization' means universities and other institutions of higher education or other organizations or enterprises as described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

1. Disposition of rights

(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c) of this section, elect to retain title to any subject invention. Provided, however, that a funding agreement may provide otherwise (i) when the funding agreement is for the operation of a Government-owned research or production facility, (ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of title to retain title to such invention will better promote the policy and objectives of this chapter or (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or foreign intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to promote the security of the United States. The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (d) of this section and the other provisions of this chapter.

"(b) (1) Any determination under (1) of paragraph (a) of this section shall be in
writing and accompanied by a written statement of facts justifying the determination. A copy of each such determination and justification shall be sent to the Comptroller General of the United States within thirty days after the award of the applicable funding agreement. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

"(2) If the Comptroller General believes that any pattern of determinations by a Federal agency is contrary to the policy and objectives of this chapter or that an agency's policies or practices are otherwise not in conformance with this chapter, the Comptroller General shall so advise the head of the agency. The head of the agency shall advise the Comptroller General in writing within one hundred twenty days of what action, if any, the agency has taken or plans to take with respect to the matters raised by the Comptroller General.

"(3) At least once each year, the Comptroller General shall transmit a report to the Committees on the Judiciary of the Senate and House of Representatives on the manner in which this chapter is being implemented and on such other matters relating to the policy and objectives of this chapter as the Comptroller General believes appropriate...

"(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

"(1) A requirement that the contractor disclose to the Comptroller General information necessary for the Federal Government to determine whether the contractor has or has not subject inventions as defined in section 205.

"(2) A requirement that the contractor make an election to retain title to any subject invention in cases in which the contractor does not elect to retain rights or fails to elect rights within such time...

"(3) A requirement that a contractor electing rights file patent applications within a reasonable time and that the Federal Government may receive title to any subject invention in cases in which the contractor has not filed patent applications on the subject invention within such time...

"(4) With respect to any invention in which the contractor elects rights, the Federal agency may acquire in the Federal Government's interest in the subject invention, a specifically identified work object. Any such determination shall have the right, in connection with the practice of the subject invention, a nonprofit organization, the United States, or both. The head of the agency may authorize the Federal agency to require the licensing to an assignee of a subject invention to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license if such license is not, itself, engaged in, or does not hold a reasonable interest in any other organization engaged in the manufacture or sale of products or the use of processes that are the subject of the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the provisions of section 205 as the contractor).

"(b) A requirement that the assignee share royalties with the contractor; and (d) a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including those in unavoidable circumstances, be utilized for the support of scientific research or education.

"(8) The requirements of sections 203, 204, and 205 of this chapter.

"(d) If a contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor the funding agreement for retention of rights by the contractor subject to the provisions of this Act and regulations promulgated hereunder.

"(e) In any case when a Federal employee is a coinventor of any invention made under a funding agreement or nonprofit organization or small business firm, the Federal agency employing such coinventor is authorized to take any action which rights it may acquire in the subject invention from its employees to the contractor-subject to the conditions set forth in this chapter.

"(f) (1) A no-funding agreement with a small business firm or nonprofit organization shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such approval is not, itself, engaged in, or does not hold a reasonable interest in any other organizations engaged in the manufacture or sale of products or the use of processes that are the subject of the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the provisions of section 205 as the contractor).

"With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this section, the Federal agency funding agreement the subject invention was made shall have the right, in accordance with regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such license to the Federal agency.

"§ 203. March-in rights.

"With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this section, the Federal agency funding agreement the subject invention was made shall have the right, in accordance with regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such license to the Federal agency determines that such—

"(a) action is necessary because the contractor or assignee has not, or is not, itself, engaged in, or does not hold a reasonable interest in any other organizations engaged in the manufacture or sale of products or the use of processes that are the subject of the invention or be in competition with embodiments of the invention; and (b) action is necessary to alleviate health or safety needs which are not reasonably met by the contractor, assignee, or their licensees;

"(c) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or their licensees;

"(d) action is necessary because the agreement required by section 205 has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to section 205.

"§ 204. Return of Government investment.

"(a) If after the first United States patent application is filed on a subject invention, a nonprofit organization, a small business firm, or an assignee of a subject invention of such an organization or firm to whom the invention was assigned, receives $700,000 in gross income for any one calendar year from the licensing of subject inventions, the United States shall be entitled to 15 per centum of all income in excess of $1,000,000 from such excess income received under nonexclusive licenses (except where the nonexclusive license has previously been granted an exclusive or partially exclusive license).

"(b) (1) Subject to the provisions of paragraph (2), if after the first United States patent application is filed on a subject invention, a nonprofit organization, a small business firm, or an assignee of a subject invention of such an organization or firm, receives gross income of $1,000,000 for any one calendar year on sales of its products embodying or manufactured or used in the practice of the subject invention, the United States shall be entitled to a share, the amount of which shall not exceed 5 per centum, of all gross income in excess of $1,000,000 for that year accruing from such sales.
subject invention is involved, no expenditure funded by the United States shall be more than once in determining the maximum amount to which the United States is entitled.

(c) The Director of the Office of Federal Procurement Policy is authorized and directed to revise the dollar amounts in subsections (a) and (b) to reflect the value of the new inventions in which the Federal Government shall have a right, title, or interest, not later than each June 30, or in such other intervals as the Director shall determine appropriate in the public interest.

(3) undertake all other suitable and necessary steps to protect and administer rights in any federally owned invention on behalf of the United States either directly or through contract; and

(4) exercise the right and authority, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

§ 209. Regulations governing Federal licensing

The Administrator of General Services is authorized to promulgate regulations specifying the terms and conditions upon which a federal agency may grant exclusive or partially exclusive licenses in any federally owned invention may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

§ 210. Restrictions on licensing of federally owned inventions

(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development and/or marketing, and, except that any such plan may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code, the Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that has supplied a plan for development and/or marketing of the invention, or products embodying the invention, or produced through the use of the invention that will be manufactured substantially in the United States.

(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that has supplied a plan for development and/or marketing of the invention, or products embodying the invention, or produced through the use of the invention that will be manufactured substantially in the United States.

(c) Each Federal agency may grant exclusively or partially exclusively licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that--

(1) the interests of the Federal Government and the public will best be served by the proposed terms and scope of exclusive or partially exclusive licenses; and

(2) the exclusive or partially exclusive license shall contain provisions required by section 29 of this title as determined appropriate in the public interest.

§ 205. Preference for United States industry

"Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any invention and no assignee of any patent which receives title to any invention shall be required to meet any standards or requirements in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to meet any standards or requirements which is an application for patent issued with the United States Patent and Trademark Office or with any foreign patent office.

§ 207. Uniform clauses and regulations

"The Office of Federal Procurement Policy, after receiving recommendations of the Office of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 205 of this chapter and the Office of Federal Procurement Policy shall establish standard funding agreement provisions required under this chapter.

§ 208. Domestic and foreign protection of Federally owned inventions

"Each Federal agency is authorized to--

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions which the Federal Government owns a right, title, or interest, and

(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patents, trademarks, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 20 of this title, as determined appropriate in the public interest; and

(3) undertake all other steps to protect and administer rights in any federally owned invention on behalf of the United States either directly or through contract; and

(4) exercise the right and authority, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

§ 209. Regulations governing Federal licensing

The Administrator of General Services is authorized to promulgate regulations specifying the terms and conditions upon which a federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license unless it determines that the exclusive or partially exclusive license will be manufactured substantially in the United States industry in foreign commerce, and that the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(c) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

(2) Any grant of a license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

(a) Periodic reporting on the utilization or efforts at obtaining utilization that are consistent with the plan; and

(b) Express reference to the plan submitted and any such information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(d) The right of the Federal agency to terminate such license is not executed if it determines that the license is not executing the plan submitted with its request for a license and the license cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(e) The right of the Federal agency to terminate such license is not executed if it determines that the license is in breach of an agreement obtained pursuant to paragraph (b) of this section; and

(f) The right of the Federal agency to terminate such license is not executed if it determines that the actions of the agency that is the plan submitted with its request for a license and the license cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention.

§ 211. Precedence of chapter

(a) This chapter shall take precedence over any other Act which would require a disposition of rights in inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter, including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 10, 1890, as amended by title 1 of the Act of August 14, 1946 (7 U.S.C. 427(a); 60 Stat. 1088); and

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090); and

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 915(a); 83 Stat. 742); and

(4) section 105(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1355(c); 80 Stat. 721); and

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 62 Stat. 393).
"(i) Nothing in this chapter is intended to alter the effect of the laws cited in paragraphs (a) or (b) or any other applicable laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small businesses.

"(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the distribution of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small businesses.

"(d) Nothing in this chapter shall be construed to require the disclosure of intelligence regarding the methods or to otherwise affect the authorities of the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources and methods."

"212. Relationship to antitrust laws

"Nothing in this chapter shall be deemed to authorize any immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law."

"(b) The table of chapters for title 35, United States Code, is amended by adding immediately after the item relating to chapter 17 the following:

"18. Patent rights in inventions made with Federal assistance.""

SEC. 3. Amendments to Other Acts.—The following Acts are amended as follows:

(a) Section 166 of the Atomic Energy Act of 1946 (42 U.S.C. 2186; 86 Stat. 947) is amended by substituting the words "held by the Commission or"

(b) The National Aeronautics and Space Act of 1954 (42 U.S.C. 2457); 86 Stat. 949) is amended by the following paragraph (g) of section 305 (42 U.S.C. 2457(g); 72 Stat. 346).

(c) The Federal Nonnuclear Energy Research and Development Act of 1974 is amended by repealing paragraphs (g), (h), and (i) of section 49 (42 U.S.C. 5908) (h), and (i); 88 Stat. 1890–1891.

Sec. 4. Effective Date.—This Act and the amendments made by this Act, shall take effect one hundred and eighty days after the date of its enactment, except that the regulations referred to in section 2, or other implementing regulations, may be issued prior to that time.

The PRESIDING OFFICER. This bill is being considered under a time agreement of 2 hours of time allotted on the bill.

Mr. BAYH. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I am pleased to be the author, along with my colleague from Kansas (Mr. DOLE), of S. 414, the University and Small Business Patent Protection Act.

The bill is designed to cut through the bureaucratic redtape that is presently strangling too many promising inventions. I am pleased that 40 of our colleagues are now co-sponsoring this important legislation. I trust that a strong majority of the Senate will lend their support to this measure when the vote is taken.

Mr. President, S. 414 addresses a serious and growing problem: Hundreds of valuable medical, energy, and other technological discoveries are sitting unused under Government control, because the Government, which sponsored the research, lacks the resources necessary for development and marketing purposes, yet is unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

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, which industry is unwilling to undertake unless sufficient incentives are provided.

The problem is substantial in HEW, the Department of Defense, the Department of Energy, and the National Science Foundation. But nowhere is the patent situation 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 business sufficient rights to bring new drugs and medical instrumentation to the marketplace.

The bill that we are considering today strikes a careful balance, it seems to me, between the rights of the Federal Government to use for itself and the public good inventions which industry is unwilling to develop, and the rights of inventors and the public to see that the inventions receive their full potential in the marketplace. I am very pleased that the Senate passed this bill unanimously. The House, I regret to say, failed to pass it.

Evidence is mounting that we are falling farther and farther behind in technological innovation and inventiveness.

The Nation that used to pride itself in being way ahead of all others in developing the new world, the better ideas is now falling behind.

There are, of course, a number of theories which have been put forth to explain this situation. Some observers have cited the dropoff in Government supported research, the nature of the modern corporation, changes in lifestyle, the entrance into the work force of inexperienced workers, and overregulation of business by the Government. Others have said that this technological lag is merely an illusion, and that our technological developments are being made, but that they are of necessity not as exciting as the unprecedented technological breakthroughs that followed World War II.

I do not wish to speculate on these theories beyond saving that many of our prominent scientists and engineers, educational leaders, business people, and prominent members of the Government have said that this problem is a very real one. One in fact so serious that it strikes at the traditional heart of the American economy. Our ability to offer the world a world of goods.

Mr. President, this bill was reported out of the Judiciary Committee on November 20, 1979 unanimously. The recent White House Conference on Small Business.
Business adopted the passage of S. 414 as one of its top recommendations to spur small business innovation. President Carter in his innovation statement of October 31, 1979 indicated his support for the concept of this bill.

Passage of S. 414 will be a good first step, in addressing the innovation and productivity slump which is of so much concern to the Congress and to the American people. As a Senator, I was privileged to preside over the hearings that were held by the Senate Judiciary Committee on S. 414, and I was very impressed by the abundance of evidence, from a broad cross-section of the American business community, in support of the proposed legislation.

I must confess that, not being an inventor, I was not aware of the bottleneck that the present patent policies create with respect to developing, and marketing new products and deliver them to the public. An idea that is thus frustrated still remains in the mind of the inventor. It is, for all intents and purposes, worthless so far as helping the American people are concerned.

I was amazed to find that we have some excellent inventions that have been developed by public research, supported to the taxpayers, but nobody is commercializing those ideas, and getting to the people who paid for the research, because of the present Government patent policies.

We are concerned, of course, that the taxpayers, who pay for the research, receive a return for the money they have invested. For that reason, there has been rather strong opposition to the general idea that we should change the patent policy and make it possible for those who develop ideas to be able to commercialize them. The rationale is that since the taxpayers supported the ideas, it would not be fair to have the small companies making a profit at the expense of the taxpayers. However, I suggest that it is folly to think that a taxpayer is getting any benefit from the tax dollars invested in research if those ideas are not resurrected or commercialized.

So, we have important inventions such as potentially revolutionary treatments for cancer patients, that are never marketed because the Government insist on retaining title to them. These inventions must be allowed to benefit the American public.

There is a whole array of new ideas gathering dust because no one is willing to take a chance, to invest dollars to commercialize, unless we know, in the best tradition of the free enterprise system, that, having taken a chance, they will be allowed to make a profit.

What we are doing here is to take an important first step in resolving this problem. I do not suggest that this is going to be a panacea for correcting all the problems of our present patent policy, just as I would be quick to say that this is not going to be a panacea for all the productivity problems we have. But I think it is an important first step.

So far as small businesses and universities are concerned, we are saying that it is possible to develop ideas that are developed, that merit commercialization, it will be possible for them to do so, with the understanding that they own the ideas they developed. Thus, small businesses will be willing to invest their own money in the process of commercialization and distribution, to see that these ideas reach the public.

We have included an equally important provision that says that if these ideas are developed and if a small business or university is willing to invest in its own resources in the commercialization process, and if the idea begins to make substantial returns, equity would require that the taxpayer be reimbursed. So we have a formula through which funds will be returned to the Government from these inventions that have a substantial success in the marketplaces.

It seems to me that we have the best of both worlds if developed in the research, make it possible for them to do so, with the understanding that they own the ideas they developed. Thus, small businesses will be willing to invest their own money in the process of commercialization and distribution, to see that these ideas reach the public.

On the other hand, we have said, "If you begin to make substantial money from these products, you should repay the taxpayer, who helped support the research, in the first place."

Before we begin debating this, there will be those who ask some sincere questions about why we limit this to small businesses and universities. I think the Senate from Illinois (Mr. Stevenson) and the Senator from New Mexico (Mr. Schttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttttt
Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, I rise in support of S. 414, the University and Small Business Patent Procedures Act.

As a co-sponsor of this legislation, I strongly urge swift action on S. 414 as reported unanimously by the Judiciary Committee.

The need for legislation of this kind has been well established. Recent studies by the Department of Labor show that the United States is falling behind other countries in a number of technological areas. More technology is coming into this Nation than is going out. Foreign countries are doubling efforts to spur innovation, while many American companies are cutting back on research and development. In today's world, we cannot afford to have this continuing decline in our innovative capacity.

It is plain that our recession— inflation problem is worse than it appears on the surface. If productivity continues to fall, there will be a reduction of our standard of living in the 1980's. One cause of this problem is the down in technological innovation. The Select Committee on Small Business published a report last June which attributed growth from 1929 to 1969, to technological innovation.

Mr. President, one of the major barriers to increased technological innovation is the present patent policy of our Federal Government. Current patent policy requires Federal agencies that fund research and development work in the private sector to retain ownership in any patentable discoveries made under research supported by them. Even if the Government has provided only a small percentage of the money used in the research and development of an invention, it can take the patent rights to subsequent inventions.

Federal agencies which hold control over these patents can grant nonexclusive licenses to the business community. Unfortunately, private business needs more time and protection to develop an invention than is guaranteed by a nonexclusive license from the Government. The record supports this assessment. Out of the more than 28,000 patents held by the Federal Government, fewer than 4 percent have been successfully licensed.

One area of the private sector, however, has a much better record in this regard. Universities, which can offer exclusive or partially exclusive licenses on the patent rights necessary, have been able to license successfully 33 percent of the patents they hold. Why then, one might ask, is the Federal Government stuck with more than 95 percent of its patent portfolio? According to the study from which the above is derived, earning the Government any money or anyone in private business any either?

The answer is simple. Presently, there are at least 24 different patent policies among the Federal agencies. These policies are often contradictory and serve as unnecessary barriers to organizations, like universities and small businesses, which are interested in developing and commercializing Government-held patents, but do not have the legal staffs to wend their way through this maze of regulations and policies.

S. 414 establishes a uniform Federal patent policy with respect to inventions made by nonprofit organizations, universities, and small businesses utilizing Government grants. It also authorizes procedures for inventions which cannot be licensed under current Federal patent policies. A return on the Government's investment is insured by a provision that any licensing or commercial use of an invention by a nonprofit organization, university, or small business, to be subject to a percentage of any gross income earned over an established amount within any calendar year.

Mr. President, the bill is designed to promote the use and marketing of inventions and ideas developed with Government support. Some would argue that it is unfair to grant a Government-grantee licensing rights or ownership of a patent and not give it to others. That broader question is being addressed, however, in separate legislation.

Likewise, many argue it is unfair to use Federal funds to achieve a new invention and then not retain the future rights of use or commercialization to it. But what will we do with these patents the Nation just sitting on a shelf? Nothing, in my opinion, and that is why I support S. 414.

Approval of this legislation will ensure that some 25 to 30 percent of all federally held patents will be subject to the provisions of the bill. It is not the entire wealth of the Federal Government's patent portfolio. But it is enough to spur further creativity and productivity at a time when our Nation needs an economic shot in the arm. I urge my colleagues to vote in favor of this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, will the Senator yield me 5 minutes?

Mr. THURMOND. Mr. President, I am pleased to yield to the distinguished Senator such time as he may require.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, today, we have a change to give our lagging economy a shot in the arm. At the same time, I think we can help small business, which is the backbone of the free enterprise system, and we can do both of these things by passing the University and Small Business Patent Procedures Act.

This bill will encourage new-product innovation and investment in small business, and it will shore up the patent system.

The patent system has served this country well, since the beginning of the Republic. It protects and nurtures the creative genius of our inventors, and it accounts in great measure for the industrial might of the country. Not only does it give the inventor a chance to make a profit from his discovery, but it also gives his competitors a chance to invent around his discovery, refining it, improving it, even making it obsolete.

Abraham Lincoln observed that the patent system "added the fuel of interest to the fire of genius." But, despite its success, several experts in the field, including Admiral Rickover, think that changes are needed. In their opinion, the Federal Government should be entitled to patent rights on discoveries made by university and business researchers who use Government funds. They think the Government's interest should be in direct proportion to the size of its contribution.

Others maintain that such a policy works against our long-term national interest. For several reasons, they contend that Government involvement would make private researchers reluctant to use any Government funds, and so slow down the inventive process. First, they say that the Government, with no real economic incentive, may be a reluctant partner in the eventual marketing of the discovery. Second, they say that the inventor will lose incentive if he or she has to share the economic rewards that flow from the discovery. They conclude that such a policy, in practice, would hamper valuable research.

With this debate in progress, the Department of Health, Education, and Welfare put a freeze on the marketing of all inventions made under Department- funded grants to universities that did not hold institutional patent agreements.

I became particularly concerned about this problem when representatives of the Johns Hopkins University came to see me and pointed out that failure to obtain greater rights in an important drug invention could jeopardize efforts to commercialize the drug, resulting in loss of its benefits to the public. It is the public that has an interest here.

Shortly afterward, I joined with Senator Doles and Senator Bayh to introduce the University and Small Business Patent Procedures Act in the 96th Congress. Relativ est introduced in this Congress, this bill will solve the problem by allowing universities, nonprofit organizations, and small businesses to obtain limited protection on discoveries they have made under Government-supported research, if they spend the additional private funds necessary to bring the discoveries to the public. It will restore the "fuel of interest" that Abraham Lincoln thought so important.

Our bill would encourage the Federal Government to grant patent rights, and it has broad support from academic and small business communities. Best of all it would cost the Government nothing. As a matter of fact, the Government stands to have its research dollars spent back to it under a provision of this bill that requires the patent holder to reimburse the Federal research money out of royalties and income.

It is time to overcome the barrier to commercialization so that the public can reap the benefits of our Federal R. & D. efforts. This bill is a good one; I urge all of my colleagues to support it.

The PRESIDING OFFICER. Who yields time?
Mr. BAYH. Mr. President, I appreciate very much the thoughtful comments of our colleague from Maryland. I think they are particularly inappropriate because he is a member of the Senate Judiciary Committee and has been one of those who has been studying this matter for a long time. It is not unusual of his concern not to pay for the necessity, but, for the fact that the people who pay the taxes ought to benefit from that investment that he would be such an enthusiastic supporter of. I am by no means parallel to him.

Mr. MATHIAS. I thank the Senator from Indiana. I can only say that without the initiative he has shown in his position as one of the leaders of the committee, and as chairman of the subcommittee, this bill would not be on the floor today.

It is an important bill to me, forward. It will free up a segment of the economy which we all feel should be freed up.

Mr. BAYH. Mr. President, I ask unanimous consent that the Senator from Indiana be permitted to suggest the absence of a quorum without the time being taken out of either side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BAYH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum be rescinded.

The PRESIDING OFFICER. Mr. BURDICK. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the Record a statement by Senator Kennedy in support of S. 414.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR KENNEDY

I am pleased to support passage of S. 414, the University and Small Business Patent Procedures Improvement Act of 1980.

This legislation represents a significant and long overdue improvement in the Government’s patent policy. It will also help to revitalize the American spirit and capacity for innovation. The need for such reform of our patent policy—one of the keys to successful innovation—is clear.

I am concerned that the number of patents granted to U.S. citizens has dropped significantly in recent years. Our economy’s lower productivity and growth rates are coupled with increased importation of foreign manufactured technology clearly justify the need for patent policy reform contemplated in S. 414.

There presently exist over 20 different procedures dealing with patent policies among various federal agencies, and these procedures vary widely and are sometimes inconsistent. Frequently, these regulations deter universities and small businesses from seeking to improve the climate for good-faith efforts to achieve commercialization, which benefits the Government and assists some of our most innovative firms and entities. This legislation will help America retain its competitive edge in technology and innovation.

I am not unmindful of the technological contributions made by the larger businesses in America. With their large resources and capabilities, large American businesses have also helped to greatly improve the state of the art in many diverse fields. This bill does not alter the ability of any business to obtain full patent rights through contract negotiations or other existing waiver procedures. It is my belief that the approach of S. 414 is an equitable one. It assists small firms to achieve commercialization, while not altering the rights of larger businesses under existing procedures.

I believe that the indicators clearly point toward the need for substantial improvements in our patent policy. I am confident that this legislation is an important first step. The Judiciary Committee anticipates undertaking additional studies and hearings on the important questions involved. As the needs and solutions become even clearer, we will continue to develop legislative proposals to improve the patent system and assist our most innovative firms and entities. This legislation will greatly enhance the climate for good-faith efforts to achieve commercialization while not altering the rights of larger businesses.

I, therefore, ask unanimous consent that the bill continue to be before the Senate, but that Senators may speak, as in morning business, on the same side of the Senate, to be charged against the bill. This way, the bill will not be set aside from morning business. The Senators who wish to speak on the bill will come to the floor and begin on it. The time they speak in morning business may do so without charging the time to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I yield to the Senator from Idaho (Mr. CHURCH).

Mr. CHURCH. Mr. President, on behalf of the Committee on Foreign Relations, the distinguished Senator from New York (Mr. JAVITS) and I are reporting to the Senate on the committee’s consideration of S. 71, the Concurrent Resolution 71, to disapprove the sale of certain weapons to Morocco. With the concurrence of Senator McGovern, who had introduced the resolution to disapprove the sales, the committee took no action to object to the proposed sales, having in mind, first, that the sales are a demonstration of U.S. support for the Kingdom of Morocco and, second, that the executive branch provided assurances that the proposed sales will enhance the climate for good-faith efforts on the part of both sides to seek a negotiated solution to the Sahara conflict.

From early in 1978 until July 1979, the United States limited its transfer of weapons to Morocco as a result of Morocco’s involvement in the Sahara war. On July 20, and July 31, 1979, Assistant Secretary of State Harold Saunders testified in executive session before the Subcommittee on Near Eastern and South Asian Affairs concerning a possible change in U.S. arms-transfer policy to Morocco. The committee sent a staff delegation to the region in August to prepare a firsthand report. The committee met again on September 20 in executive session to review the staff report and discuss the issue. On September 21, 1979, we sent a letter to the President making several recommendations concerning the proposed change in U.S. arms-transfer policy.

Mr. President, I ask unanimous consent that the letter be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. On January 24, 1980, the committee received three notifica-