

May 6, 2024

Katherine K. Vidal

Under Secretary of Commerce for Intellectual Property and Director of the USPTO
100 Bureau Drive
Gaithersburg, MD 20899

Dear Director Vidal:

The Bayh-Dole Coalition appreciates the opportunity to provide our perspective on how the USPTO can better incentivize the commercialization of critical, emerging, and green technologies.

The Bayh-Dole Coalition is a diverse group of innovation-oriented organizations and individuals committed to celebrating and protecting the Bayh-Dole Act. We appreciate the USPTO's longstanding commitment to protecting intellectual property rights — and recognizing their importance as the “critical engine that powers our economy and supports our nation as a global leader in innovation and entrepreneurship.”

The innovation renaissance which boosted the United States from a country rapidly losing its technological edge in the late 1970's into the world leader in innovation was sparked by three events: the enactment of the Bayh-Dole Act to promote the commercialization of federally funded inventions, the Supreme Court's ruling that human-made micro-organisms were patentable, and the creation of the Court of Appeals for the Federal Circuit, which restored confidence in the enforceability of U.S. patents.

Unfortunately, America's world-leading innovation system is now under threat from those who disdain the patent system. We cannot afford to go back to a time when the U.S. lagged behind its competitors in key fields.

The Bayh-Dole Coalition believes that the U.S. Patent and Trademark Office is uniquely positioned to communicate with policymakers, the media, and the American public regarding the critical role patent protections play in bolstering U.S. economic competitiveness.

A compelling example USPTO can cite is the Bayh-Dole Act. Prior to the passage of the Bayh-Dole Act in 1980, the U.S. government took patents away from their creators if the invention was funded, even in small part, with federal support. The government rarely licensed these patented inventions out for further development. As a result, thousands of potential breakthroughs remained warehoused in Washington rather than becoming fully-fledged products. Taxpayer money was wasted, and technological progress lagged behind where it could have been.

Bayh-Dole changed all this by allowing universities, non-profit research institutions, and small companies to own patents on federally supported inventions — and license those patents to private firms for commercialization. Bayh-Dole removed barriers preventing our best minds in the public and private sectors from working together.

The historic public-private partnerships which formed in response to the Covid-19 pandemic are a testament to Bayh-Dole's success. While most of the world shut down, researchers in academia, federal laboratories, and industry worked around the clock to develop desperately needed countermeasures. The Bayh-Dole Act — and the incentives it established — made this life-saving collaboration possible.

Bayh-Dole's success goes far beyond medicine. The law has also supported the development of breakthrough green technologies. Worcester Polytechnic Institute's Professor Yan Wang recently created a new lithium battery recycling method that cuts manufacturing emissions by a staggering 90%. This patented process, which was supported by federal dollars, could soon enable electric vehicle makers to produce batteries more efficiently than ever.

The academic technology transfer system Bayh-Dole created has also spurred the development of numerous technologies that are foundational to U.S. national security. One is quantum computing, which demonstrates unparalleled potential for codebreaking and fortifying computer networks against cyberattacks. Touch-screen technology, airport scanners, and firefighting drones are other notable Bayh-Dole-enabled technologies.

Bayh-Dole's impact on economic prosperity — a topic the USPTO emphasized in its request for comment — has also been remarkable. Between 1996 and 2020, the law was responsible for adding an estimated \$1.9 trillion to U.S. industrial output.

Those who assume the risk in the Bayh-Dole system are private-sector entrepreneurs. Private companies contribute over seven times more R&D funding than the federal government to the commercialization process. Without these firms, groundbreaking inventions would never make it out of academic labs and into the hands of consumers. And without strong patent rights, these venture capitalists and start-ups wouldn't place such risky bets in the first place.

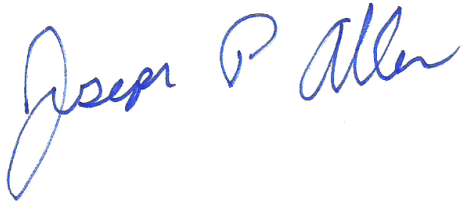
For the past 43 years, the Bayh-Dole Act, resting on the foundation of our patent system, has convinced the private sector that government-funded entities like our research universities and federal laboratories can be important and reliable research partners. Another program that Bayh-Dole makes possible is the Small Business Innovation Research program, which connects visionary entrepreneurs with crucial early-stage venture capital.

Because Bayh-Dole and other pillars of our innovation system are quietly humming in the background, they are often misunderstood by some policymakers and members of the general public. In recent years, Bayh-Dole has been attacked by those who mistakenly claim the public is being "exploited," and that federal agencies have the statutory authority to dictate prices for consumer products resulting from federally funded research. These false claims have taken root, culminating in misguided policy proposals that would undermine — rather than strengthen — the U.S. innovation system. While recent efforts to weaken the Bayh-Dole Act are not the subject of your request for comment, they cannot be ignored as they pose the gravest of threats to the U.S. innovation system.

This is where the USPTO can play a critical role. Because of your unique position, you are perfectly placed to explain the connection between a strong, reliable patent system and the public and private sector R&D partnerships based on the Bayh-Dole Act, which make the United States the innovation leader of the world. Efforts which undermine this system by weakening the patent system or re-imposing “Washington knows best” micro-management on federally-funded inventions strike direct blows at the system we depend upon for our economic growth as well as for making lives better here and around the world.

The Bayh-Dole Coalition appreciates having the opportunity to share these thoughts with you. We are happy to work with you as the USPTO works to fulfill its critical mission under your leadership.

Sincerely,

A handwritten signature in blue ink that reads "Joseph P. Allen". The signature is written in a cursive style with a large, looped initial "J".

Joseph P. Allen
Executive Director
Bayh-Dole Coalition