To: Senator
From: Joe
Re:Your meeting with Eli Lilly tomorrow
March 20, 1980
cc: Kevin, Mary, Linda, Marcia,Tom, Eve, David B., Press, Bob, Ann M., Leg, Indiana Dept

I have summarized your patent bills and their status for tomorrow's meeting with the Eli Lilly representatives. (Lilly Patent counsel) Dick Whale, who has testified here on two of your bills will not be able to attend tomorrow's meeting.

Here is briefly where your bills are right now:

Patent Reexamination- the Judiciary Committee reported out a clean bill last week unanimously that is identical to S. 1679 which was held up on the floor because it did not have an effective date. This bill should be able to pass on unanimous consent.

The bill allows the Patent and Trademark Office to reexamine challanged patents where the question of patent validity is based on prior patents or printed materials. This will be a lot cheaper than going to district court ($1,500 v. $250,000 in court costs) and will help the courts handle the cases that go to litigation because the opinion of the PTO will be available.

Patent Policy- The Bayh/Dole bill, S. 414, is on the calender and will be hopefully brought up when Windfall Profits are concluded.

This bill allows universities, nonprofit organizatons and small businesses to retain ownership of the discoveries that they make when working for the government. Eli Lilly does not fall under any of these categories so they might question why other companies are not included. You might reply that this is a much more difficult problem (as evidenced by Sen. Long who thinks that the present bill is designed to unfairly aid large drug companies like Lilly that could get licenses from universities under your bill).

(over)

You could also say that this limited approach is a necessary first step toward addressing the broader question.

Independent Patent and Trademark Office- You concluded hearings on S. 2079 last week. The bill is supported by industries like Lilly enthusiastically. It is presently in the Governmental Affairs Committee with a sequential referral to Judiciary.

This legislation simply creates an independent PTO-- separated from the Commerce Department-- and allows the Commissioner to serve a 6 year term of office.

Other issues

1. ThePTO budget-will be offered to the Appropriations Committee next week, indications are that it will not be cut and will show a $7 million increase over last year's which you tried to increase by $14 million. This is not enough, but is at least movement in the right direction. You might want to say that you will closely monitor the recommendation to make sure that it is going where the Office itself thinks that it needs help.

2. Extending the life of a patent- many companies like Lilly are forced to spend years (ten years is not uncommon) before the Food and Drug Admn. before clearance is given to market new medicines. This period of waiting considerable cuts down on the life of the patent which is 17 years. Many companies are drafting legislation (which they want you to introduce) that would exempt this period from the patent's life. This will be a very popular issue with industry but will be opposed by people like Russell Long. You might want to say that you are aware of the problem and it is a serious one that deserves attention.

(over)

Recombinant DNA- the Supreme Court heard arguments this week over whether or not some of the work being done with DNA is patentable.

It is likely that the Supreme Court will say that it is not because this type of research was not envisioned at the time that the patent laws were enacted. If so this would require legislation to clarify the intent of the patent laws in this area. The decision is expected in June. I think that this would be a good area for you to get involved in if the Court rules against patentability. If this research is not patentable it will be difficult to develop. Purdue University is very concerned with this question as are many of the universities that are doing the work. It is also an important question to companies like Lilly. I doubt that they will press you on this but again I think that you could respond that this is a very serious question and if the Supreme Court rules against patentability this would deserve the attention of the Congress.