

This pile is when things got interesting. The first memo is to Sen. Bayh about Norm Latker being fired at NIH for supporting our bill. You can see Sen. Bayh's comment in the upper margin ("a must") indicating his agreement that we should help Norm. (He wound up moving to the Small Business Administration's Office of Advocacy. Norm then moved to the Office of Federal Procurement Policy that had original oversight of the law. Thus, he was involved in the two year battle after enactment to secure the implementing regulations. That fight is documented briefly in the last papers in this bundle.

The Carter Administration wanted us to hold off moving S. 414 (Bayh-Dole) until they had completed their review of patent policy. They had seen the 1978 version and we felt that with time running out (remember that 1980 was a Presidential election year and both President Carter and Sen. Bayh were running for re-election) we simply could not wait any longer.

The Senate Commerce Committee got into the act and introduced a bill extending patent ownership to all contractors regardless of size. Included is Sen. Bayh's statement at a joint Senate Judiciary (our committee) / Commerce (theirs) hearing on patent policy.

Sen. Long very much disliked giving patent ownership to contractors, but because our bill was limited to universities and small companies had stayed on the sidelines. All that changed when Senators Schmitt, Stevenson and Packwood attempted to amend our bill on the Senate floor expanding its coverage.

You can see our rival "Dear Colleague" letters laying out our positions. Even though we beat back the amendment, this effort to expand coverage brought Sen. Long to the floor in full voice objecting to final passage of the bill. Final passage was suspended due to Long's objections. We then lost several precious months negotiating to bring it back up. It finally passed the Senate on April 23, 1980.

One of the documents has my notation to Ralph Oman of Sen. Mathias (R-MD) staff asking him to join the signers of another "Dear Colleague" letter dated Feb. 22, 1980.

Also enclosed is the copy of the Senate Judiciary Committee report on S. 414 that I wrote with my notes for use during the floor debate on the bill. We always put together full folders of key documents when sitting beside Sen. Bayh on the Senate floor. Unfortunately, I didn't keep mine. Perhaps it might be included in his official papers.

The House passed the Carter Administration patent policy as part of a larger bill. I enclosed a copy of that bill and the Committee report. The patent policy provisions begin on p. 11 of the bill.

You can see Sen. Long's reaction and our letter back to him included next.

We were desperate to find a vehicle to attach our patent policy amendment since the Congress would adjourn early for final campaigning before the November election.

You will see a statement by Sen. Bayh as we worked with the Senate Small Business Committee to amend one of their pending bills with our patent policy. Note that Sen. Gaylord Nelson's (chair of the Small Business Committee) is crossed out and Bayh's name inserted. I believe that I wrote this for whichever Senator was available to offer the amendment. Nelson had been a staunch opponent of any change in patent policy, but with the limitation of our bill to small businesses, and the tremendous support we received from WARF, the Senate Small Business Committee became one of our strongest supporters. You can see that Nelson actually signed onto our "Dear Colleague" letter opposing expanding Bayh-Dole to large companies.

The election of 1980 turned out to be a rout for Democrats. Carter lost to Ronald Reagan and dragged other Senators, including Birch Bayh, down with him. Congress came back for a short "lame duck" session in order to pass the budget.

WARF was working on Rep. Kastenmeier (D-WI) on the House Judiciary Committee who included the Carter Administration patent policy as part of a larger patent reform package. Sen. Bayh had also introduced a patent re-examination bill, together with legislation making the Patent and Trademark an independent agency, and extending the patent term to make up for time lost in regulatory clearances. I included information on these, which are clipped together.

Just as the last days of Congress were facing us, I received a call from Bruce Lehmann with Kastenmeier's staff. He proposed a deal: they would accept our patent policy in exchange for our accepting their patent re-examination bill. I said that this sounded fair, and Bruce said that he knew we were getting the better part of the bargain (which, of course, we were). Howard Bremer deserves tremendous credit since Bruce and I had largely stopped talking. Bruce remarked to his staff colleagues that I was harder to deal with than Sen. Kennedy's staff (which I took as a compliment, although it certainly wasn't meant as such).

We still had another hurdle to overcome since before any bill could be brought up, it required unanimous consent (meaning that a single objection killed it). When I called the Senate Majority Leader's (Sen. Byrd- D-WV) office to ask that our bill be added to the calendar of legislation to be brought up, I was told there were two "holds" on it. Under the unofficial rules of the Senate, you are not told who is holding up the bill.

I knew that one must be Sen. Long and guessed that the other was Sen. Stevenson who was trying to pass what became the Stevenson-Wydler Act at the same time. I found Steve Merrill with Sen. Stevenson's staff in the Senate cafeteria (Steve is now with the National Academy of Sciences) and made him an offer that he couldn't refuse (either they lift their hold on us or we put one on his bill).

I then got a call from Wylie Jones with Sen. Long's office. Wylie and I had a great personal relationship even though our bosses were on different sides of this fight. He said that he had two questions for me:

Did Senator Bayh really want this bill passed?

Would it be better for me if the bill failed so I could hook up with another Senator and try again next year?

Since I would soon be out of work, the second question was pretty pertinent to my immediate future, but I told Wylie that both Senator Bayh and I would greatly appreciate his lifting his hold so the bill could be passed. Wylie said ok and Sen. Long then called Sen. Bayh and told him to proceed.

When I got back to the Senate Majority Leader, they said ok but since things were closing down (think the fall of Saigon, since the Republicans were taking over the Senate the next Congress), we must be ready to bring up the bill when they signaled or they would pass us over.

I stayed on the Senate floor and got the word that we would be up next. I called Sen. Bayh's office and was told that he was in the middle of a press conference and could not make it to the Senate floor in time. In desperation, I went to the Senate cloakroom and saw Sen. Dole. I told him what was happening and gave him the legislative package to introduce.

That is why you see Sen. Dole's name on the Congressional Record reprint of Nov. 20, 1980 when we finally passed the bill.

After Congress adjourns, the President has only a few days to sign pending legislation or it is "pocket vetoed." We worked with the SBA and the Small Business Assn. of New England that had worked with the Administration on a small business summit that year. Through personal contacts, Stu Eisenstadt - Carter's chief of staff, was persuaded to sign the bill. It was enacted on the last possible day.

Because Bayh was gone and a new Administration was taking over, the Dept of Energy patent lawyers (who were losing their power to conduct case by case reviews of patent waivers under our law). Luckily, Norm Latker had moved to the Office of Federal Procurement Policy, which was responsible for writing the implementing regulations. This was a two year, line by line fight. The final papers chronicle this bitter struggle.

By the way, Ashley Stevens wrote an excellent article several years ago after he interviewed me on the passage of Bayh-Dole. It will help make more sense of the flow of events.

Hope this helps!