PRESIDENTIAL RADIO TALK: INNOVATION LEGISLATION
SATURDAY, AUGUST 27, 1983

My fellow Americans:

You have heard a great deal of discussion in recent years about the issue of our country's industrial competitiveness. We have faced some tough competition from abroad in industries ranging from traditional ones like steel to "high technology" ones like semiconductors. There are many factors making competition tough for a lot of our industries, including insufficient capital formation, a strong dollar, and difficult labor-management relations.

One of the most important factors affecting our industrial competitiveness is our ability to create and develop new technologies. Advances in technology allow our economy to develop new or improved products and to produce more cheaply those products already out on the market.

What does technology mean in terms of our daily lives? It means jobs. The development of the computer, for example, has created jobs for about 350,000 people in the computer industry. It means a better quality of life. We can live longer and healthier lives because of new medical technologies. We can travel farther and faster because of developments in aeronautics. Technology also means stronger national security. Advanced defense technology enables us to keep the peace and to maintain our freedom.

Technology also means more competitive U.S. industries.

America's great competitive edge lies not in our having lower labor costs than other countries, but in our inventing and developing new ideas.

New technologies sometimes come from serendipity. But they usually come from systematic research conducted in both the private and public sectors. We have taken many steps to increase research and development in the public sector and encourage R&D in the private sector. I proposed in my 1984 budget to increase federal funding of R&D by 17 percent to $47 billion.

To encourage the private sector to expand its estimated $50 billion investment in R&D in 1984, we have done a number of things. In addition, the lower inflation and interest rates resulting from our economic program have reduced substantially the cost of conducting research. The 1981 Economic Recovery Tax Act provides a 25 percent tax credit to encourage firms to invest in additional R&D.

We have also been looking at two major areas of legislation affecting innovation -- the antitrust and intellectual property laws. The antitrust laws are designed to protect consumers from ~~truly~~ anticompetitive behavior. While the economy generally benefits most from vigorous competition among independent businesses, the antitrust laws recognize that in some areas, like the creation and development of technology, cooperation among producers, even competitors, ~~might be necessary~~ can actually serve to maximize the benefits to consumers.

The intellectual property laws promote the interests of consumers by protecting the rights of ~~allowing~~ inventors and innovators to reap the

rewards of their efforts ~~to~~ develop ~~new~~ technologies, thereby However, the intellectual property laws, as currently interpreted, often discourage innovation.

After reviewing the effect of the antitrust and intellectual property laws on innovation and consulting with key members in the House and the Senate, I have concluded that a few, relatively minor modifications could greatly enhance the ability of the private sector to create and develop technology. Hence, I am proposing legislation entitled the National Innovation and Productivity Act of 1983.

An important aspect of the bill is the treatment of procompetitive joint R&D ventures under the antitrust laws. The increasing complexity of research and development often makes it necessary to have large scale R&D efforts. These large scale projects are often beyond the scope of any individual company's ability to undertake. ~~Especially given~~ In light of the R&D efforts of foreign competitors, it may very well be ~~the case~~ that allowing cooperation among U.S. companies to conduct joint R&D can enhance competition.

Nevertheless, there is a widespread perception in American industry that the antitrust laws discourage procompetitive joint R&D efforts. The risk of paying three times the amount of actual damages discourages some companies from forming procompetitive joint ventures.

My proposed bill would address this problem by first clarifying that the courts may not condemn a joint R&D venture under the antitrust laws without first considering its benefits

of enhancing competition. Second, it would provide that a joint R&D venture that has been fully disclosed to the Justice Department and the Federal Trade Commission may be sued only for the actual damage caused by its conduct. Hence, the bill would eliminate the deterrent that antitrust laws may have on procompetitive joint R&D ventures, while still providing adequate legal remedy to those injured by anticompetitive joint ventures.

The ~~rest of the~~ proposed legislation also includes ~~other~~ provisions amending the antitrust, patent, and copyright laws. The net effect of these changes would be to enhance considerably the ability and the incentive of the private sector to create and develop new technologies. This legislation would ~~help~~ improve the ability of U.S. industry to compete in world ~~its productivity and competitiveness in international~~ markets. I strongly urge the Congress to pass this proposed legislation as a means of encouraging innovation, ~~and hence of~~ improving ~~job~~ opportunities for lower workers, expanding consumer choice, and quality of life for all Americans. improving the

Until next week, thank you and God bless you.

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR CRAIG L. FULLER

FROM: LEHMANN K. LI

SUBJECT: Justice Innovation Legislation

Larry Herbolsheimer asked me to provide you a brief review of Justice's proposed innovation legislation and of how the Administration plans to introduce it. Wendell Gunn wanted to talk to you about the bill this afternoon.

On August 4th, the Cabinet Council on Commerce and Trade discussed the bill which is entitled "The National Productivity and Innovation Act of 1983". The bill currently includes the following features:

- o Joint R&D ventures. Courts may not find that a joint R&D venture violates the antitrust laws without first considering how it helps competition. Also, any joint R&D venture fully disclosed to Justice and the Federal Trade Commission may be sued only for actual, rather than treble, damages.

- o Intellectual property licensing. Courts may not find that an intellectual property licensing arrangement violates the antitrust laws without also first considering how it helps competition. Such an arrangement also may only be sued for actual, rather than treble, damages.

- o Patent and copyright misuse. Courts must use meaningful economic analysis in determining if the use of patents and copyrights results in less competition.

- o Process patents. Owners of U.S. process patents can prevent foreign manufacturers from using their process technology without their consent to import products made under those process patents into the U.S.

OMB has cleared this bill. It is currently clearing the transmittal letter.

Congressman Rodino has scheduled a hearing on antitrust reform legislation on Wednesday, September 14th. According to Justice, that hearing may be the only opportunity for the Administration to present its case on our bill in the House. Justice has apparently been unsuccessful in rescheduling the hearing. For Bill Baxter to testify on the Administration bill, Justice thinks it is necessary to introduce the bill on Monday, September 12th.

The legislation represents a major Administration initiative to help promote greater research and development efforts in the private sector. The CCCT thought that it would be appropriate for the bill to be a Presidential, rather than just a Justice, initiative. A proposed Presidential announcement, Presidential Statement, and fact sheet are being drafted. A copy of the fact sheet is attached.

If there is any other information I can provide, please let me know.

cc: Roger B. Porter
Wendell W. Gunn

Attachment

FACT SHEET
THE NATIONAL PRODUCTIVITY AND INNOVATION ACT
OF 1983

The National Productivity and Innovation Act of 1983 is part of the Administration's overall effort to increase research and development. The proposed bill recognizes the importance of new technology to this nation's effort to improve the competitivess and productivity of American industry.

The Administration already has moved to strengthen research and development by the government, by proposing in the 1984 budget transmitted to Congress that federal funding of R&D be increased by 17 percent to $47 billion. Private sector R&D--which has been estimated at roughly the same magnitude--is often a more efficient creator and developer of new technology.

After reviewing the laws that affect private sector R&D and after consulting with Congress, the Administration has determined that several minor modifications in the antitrust and intellectual property laws--such as patent, copyright, trade secret and trademark laws--could further improve the climate for private investment in R&D. The National Productivity and Innovation Act embodies those modifications, which together deal with all phases of the innovation process.

The bill contains the following four substantive titles. (Title I simply names the bill.)

TITLE II

Title II of the bill will insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as the venture does not threaten to facilitate price fixing--for example, through exchange of information on prices or production levels--or to reduce innovation--for example, by a tacit agreement to underinvest in R&D--such ventures do not violate the antitrust laws. Nevertheless, because a successful antitrust claimant--an injured party who wins a private antitrust damage suit in federal court--is automatically entitled to three times the damage actually suffered, the threat of such an antitrust suit may inhibit the formation of beneficial joint R&D ventures that would improve the well-being of consumers.

Title II will alleviate this threat by providing that the courts may not condemn a joint R&D venture as per se illegal under the antitrust laws--i.e., it will prevent courts from finding that any joint R&D venture violates the antitrust laws without first finding that it actually has anticompetitive effects which outweigh its procompetitive effects. A second provision of this title will provide that firms operating a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be

sued only for the amount of the actual damage caused by its conduct, plus interest, and not for three times that damage. These changes should encourage the formation of additional procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, they will do so with the minimal amount of bureaucratic interference.

TITLES III and IV

To assure that our laws stimulate private sector R&D, however, it is not enough to remove the adverse deterrent effect the antitrust laws may have on joint R&D. The antitrust and intellectual property laws must allow and even encourage those who create new technologies to bring their technology to market in all of its useful applications.

Titles III and IV recognize that very frequently the most efficient way to encourage new applications of technology is to license that technology to others. Licensing can enable intellectual property owners to employ the superior ability of other enterprises to market new applications more quickly and at lower cost.

Title III will prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. It also will eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Those who suffer antitrust injury as a result of licensing will still be able to sue for their actual damages plus interest.

Title IV will preclude the courts from using the legal doctrines of patent and copyright misuse to condemn the procompetitive licensing of intellectual property. Courts will not be able to refuse to enforce a valid patent or copyright on the ground that the conduct somehow suppressed competition--as they may do now under those doctrines--unless after analysis they find that the conduct constitutes a violation of the antitrust laws.

TITLE V

Title V will close a loophole in the patent laws that not only has discouraged investment in efficiency-enhancing technologies but also has needlessly caused the migration of jobs out of this country. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V will enable owners of process patents to prevent what amounts to overseas theft of their technology.

U.S. Department of Justice
Antitrust Division

Special Assistant to the
Assistant Attorney General

August 19, 1983

TO: Lehmann Li

Lehmann,

I am attaching copies of the Fact Sheet for the National Productivity and Innovation Act and our redraft of the Radio Message on that topic. In addition, I am also attaching a copy of the Transmittal Letter, which I understand OMB has already sent you. These documents are self-explanatory.

With regard to the Radio Address, we feel rather strongly that the message should deal with the bill in its entirety. Bill has called Roger Porter on this matter. If there is any difficulty with trying to change the draft, or if our draft is in some way inadequate or unsatisfactory, please give me a call. If you think it will be helpful, I could come down and work with you or whomever on trying to get an appropriate draft.

If you have any questions or comments, please let me know as soon as possible. If you can think of anything else that needs to be done, also please give me a call.

Thanks,

Rick Rule

cc: Roger Porter
Wendell Gunn

FACT SHEET
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The bill contains the following four substantive titles. (Title I simply names the bill.)

TITLE II

Title II of the bill will insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as the venture does not threaten to facilitate price fixing--for example, through exchange of information on prices or production levels--or to reduce innovation--for example, by a tacit agreement to underinvest in R&D--such ventures do not violate the antitrust laws. Nevertheless, because a successful antitrust claimant--an injured party who wins a private antitrust damage suit in federal court--is automatically entitled to three times the damage actually suffered, the threat of such an antitrust suit may inhibit the formation of beneficial joint R&D ventures that would improve the well-being of consumers.

Title II will alleviate this threat by providing that the courts may not condemn a joint R&D venture as per se illegal under the antitrust laws--i.e., it will prevent courts from finding that any joint R&D venture violates the antitrust laws without first finding that it actually has anticompetitive effects which outweigh its procompetitive effects. A second provision of this title will provide that firms operating a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be

sued only for the amount of the actual damage caused by its conduct, plus interest, and not for three times that damage. These changes should encourage the formation of additional procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, they will do so with the minimal amount of bureaucratic interference.

TITLES III and IV

To assure that our laws stimulate private sector R&D, however, it is not enough to remove the adverse deterrent effect the antitrust laws may have on joint R&D. The antitrust and intellectual property laws must allow and even encourage those who create new technologies to bring their technology to market in all of its useful applications.

Titles III and IV recognize that very frequently the most efficient way to encourage new applications of technology is to license that technology to others. Licensing can enable intellectual property owners to employ the superior ability of other enterprises to market new applications more quickly and at lower cost.

Title III will prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. It also will eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Those who suffer antitrust injury as a result of licensing will still be able to sue for their actual damages plus interest.

Title IV will preclude the courts from using the legal doctrines of patent and copyright misuse to condemn the procompetitive licensing of intellectual property. Courts will not be able to refuse to enforce a valid patent or copyright on the ground that the conduct somehow suppressed competition--as they may do now under those doctrines--unless after analysis they find that the conduct constitutes a violation of the antitrust laws.

TITLE V

Title V will close a loophole in the patent laws that not only has discouraged investment in efficiency-enhancing technologies but also has needlessly caused the migration of jobs out of this country. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V will enable owners of process patents to prevent what amounts to overseas theft of their technology.

RADIO ADDRESS

A great deal of concern has been expressed in recent years about this country's productivity and competitiveness. During the 1970s, American firms faced increasingly stiff foreign competition. This competition appeared not only in traditional industries such as steel but also in "high technology" industries such as semiconductors.

Although a number of factors have contributed to these difficulties, this country's ability to reinvigorate industrial competitiveness will depend largely on our ability to create and develop new technologies. Advances in technology provide our economy with the means to produce new or improved goods and services and to produce at lower cost those goods and services already on the market.

What does technology mean to our daily lives? It means exports and jobs. Our ability to create and develop new ideas provides us with an advantage in international markets. For example, the computer industry, which was in its infancy a short time ago, employs more than 1.5 million people. Technology also means an improved quality of life. New medical technologies are constantly increasing our life span and reducing the pain and suffering of mankind. And technology means enhanced national security. The improvement of technology, then, is something in which all Americans have an interest.

Although one often hears stories about new technologies being created by serendipity, the truth is that either the public or private sector must spend a great deal of time, money and effort to discover and develop new technologies. I have already moved to bolster public sector research and development, by proposing in my 1984 budget to increase federal funding of R&D by 17 percent to $47 billion. However, public sector R&D is not enough. The private sector, responding to the discipline of the marketplace, is often a more efficient creator and developer of new technologies.

My Administration has already done a number of things to improve the climate for private sector R&D. For example, lower inflation and interest rates brought about by our economic program have reduced substantially the cost of conducting research. In addition, the Economic Recovery Act of 1981 provides a 25 percent tax credit to encourage firms to invest in additional R&D. Despite these improvements, however, our job is not complete.

It is necessary to assure that our laws encourage the private sector to invest in R&D. The antitrust and intellectual property laws have the most profound effect on such investment. The antitrust laws protect consumers from truly anticompetitive behavior that stifles innovation and raises prices. The intellectual property laws, such as those dealing with patents, encourage competition in the creation and development of new and useful technologies, by providing creators with the exclusive rights to their technology.

After carefully reviewing the effect of these laws on R&D and after consulting with Republicans in Congress, I have concluded that a few modifications could significantly stimulate private sector R&D. Accordingly, I am proposing legislation entitled the National Productivity and Innovation Act of 1983. Unlike other legislative proposals put forward on this subject, my bill deals with all phases of the innovative process.

First, my bill will insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as those ventures do not threaten to result in price fixing or to reduce innovation, they should not violate the antitrust laws. However, because a successful antitrust claimant is automatically entitled to three times the damages actually suffered, the threat of an antitrust suit may inhibit the formation of beneficial joint ventures that enhance the well-being of consumers.

My bill will reduce the risk of antitrust condemnation of procompetitive joint R&D ventures and will eliminate the unreasonable threat of triple damages. The bill thus will encourage the formation of procompetitive joint ventures. And it will do this with the minimum possible amount of bureaucratic regulation and interference in the functioning of those ventures.

If we truly want to stimulate private sector R&D, however, it is not enough to eliminate the adverse effect the antitrust laws have on joint R&D. Rather, we must also insure that the law allows--indeed encourages--the private sector to bring new technology to market as efficiently as possible. Only then can inventors and innovators be assured of the maximum legitimate return on their investment in R&D. Accordingly, my bill will modify the antitrust and intellectual property laws to insure that they do not inhibit the full and efficient development of new technologies.

Finally, my bill will close a loophole in the patent laws that not only has discouraged investment in efficiency-enhancing technologies but also has needlessly caused the migration of jobs out of this country. The bill will, for the first time, give the owners of United States process patents the ability to prevent what amounts to overseas theft of their technology.

The net effect of these changes will be to stimulate the advance of technology and to improve the ability of our industries to compete internationally. I strongly urge Congress to pass the proposed legislation as a means of encouraging innovation, and hence of increasing the employment opportunities and standard of living for all Americans.

Until next week, thank you and God bless you.

8/18/83

To the Congress of the United States:

I am transmitting to the Congress today a legislative proposal entitled, the "National Productivity and Innovation Act of 1983." The bill will modify the federal antitrust and intellectual property laws in ways that should enhance this country's productivity and the ability of our industries to compete in international markets.

As you know, one of the most important goals of my Administration has been the revitalization of the competitiveness and productivity of American industry. Tax cuts proposed by my Administration and enacted during the 97th Congress have greatly stimulated economic activity. In addition, our efforts to rationalize federal rules and regulations have significantly enhanced the efficiency of our economy. By assuring that regulations are designed and implemented to achieve their objective in the most cost-effective manner, we have eliminated needless red tape that had stymied the ability of our industries to compete effectively worldwide. Moreover, our economic policies have brought down inflation and interest rates and already have begun to reduce the level of unemployment. For the first time in over a decade, there exists the foundation for a period of strong and sustained economic growth. Despite these accomplishments, however, our job is not complete.

The ability of the United States to improve industrial productivity and competitiveness will depend largely on our ability to create and develop new technologies. Advances in

technology provide our economy with the means to produce new or improved goods and services and to produce at lower cost those goods and services already on the market. It is difficult to overstate the importance of technological development to a strong and healthy United States economy. It has been estimated that advance in scientific and technological knowledge has been responsible for almost half of the increase in this country's labor productivity over the last 50 years. New technology also creates new jobs and gives this country an advantage in world markets. For example, the computer industry, which was in its infancy just a short time ago, employs more than 1.5 million Americans.

Although one often hears stories about new technologies being created by serendipity, the truth is that either the public or private sector must spend a great deal of time, money and effort to discover and develop new technologies. My Adminstration has moved to bolster reasearch and development in the public sector, by proposing in our 1984 budget to increase federal funding of R&D by 17 percent to $47 billion. However, public sector funding of R&D is not enough. The private sector, responding to the discipline of the marketplace, is often a more efficient creator and developer of new technologies. It is therefore important that our laws affecting the creation and development of new technologies properly encourage private sector R&D.

The antitrust and intellectual property laws have perhaps the most profound effect on private investment in R&D. The antitrust laws are designed to protect consumers from truly anticompetitive conduct. While the economy generally is best served by vigorous competition among independent businesses, the antitrust laws recognize that some cooperation, even among competitors, may be necessary to maximize the well-being of consumers. The creation and development of new technology is one area where such cooperation is frequently beneficial.

The intellectual property laws, for example those dealing with patents and copyrights, also serve to promote the interests of consumers. The promise of the financial reward provided by exclusive rights to intellectual property induces individuals to compete to create and develop new and useful technologies.

After reviewing the effect of the antitrust and intellectual property laws on the creation and development of new technologies and after consulting with members of Congress, I have concluded that a few, relatively minor modifications could significantly stimulate private sector R&D. The National Productivity and Innovation Act of 1983, which embodies those changes, is a package of four substantive proposals which deals with all phases of the innovation process.

Title II of the bill will insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in R&D projects. Joint ventures often may be necessary to lower the risk and cost

associated with R&D. So long as the venture does not threaten to facilitate price fixing or to reduce innovation, such ventures do not violate the antitrust laws. Nevertheless, the risk remains that some judges may ignore the beneficial aspects of joint R&D. This risk is unnecessarily magnified by the fact that a successful antitrust claimant is automatically entitled to three times the damages actually suffered.

Title II will alleviate the adverse deterrent effect that this risk may have on procompetitive joint R&D ventures. This title provides that the courts may not condemn a joint R&D venture under the antitrust laws without first considering its procompetitive benefits. In addition, Title II provides that a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the actual damage caused by its conduct. This combination of changes will encourage the formation of procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, it will do so with the minimal amount of bureaucratic interference in the functioning of those ventures.

If we are to assure that our laws stimulate investment in, and development of, new technologies, however, it is not enough merely to correct the adverse deterrent effect the antitrust laws may have on joint R&D. Rather, we must also assure that the antitrust and intellectual property laws allow--indeed encourage--those who create new technologies to bring their

technology to market in the most efficient manner. Only in this way can those who invest their time, money and effort in R&D be assured of earning the maximum legitimate reward.

Titles III and IV recognize that very frequently the most efficient way to develop new technology is to license that technology to others. Licensing can enable intellectual property owners to employ the superior ability of other enterprises to market technology more quickly and at lower cost. This can be particularly important for small businesses that do not have the ability to develop all possible applications of new technologies by themselves. However, the courts have not always been sympathetic to these procompetitive benefits of licensing.

Title III will prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. In addition, the title will eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Although those who suffer antitrust injury as a result of licensing will still be able to sue for their actual damages plus prejudgment interest, Title III will minimize the deterrence that the antitrust laws currently may have on potentially beneficial licensing of technology.

Similarly, Title IV will preclude the courts from using the doctrines of patent and copyright misuse to condemn the procompetitive licensing of intellectual property. Under Title IV, courts will not be able to refuse to enforce a valid patent

or copyright on the ground that the conduct somehow suppressed competition, unless after meaningful analysis they find that the conduct constitutes a violation of the antitrust laws.

Finally, our proposal will close a loophole in the patent laws that not only has discouraged investment in efficiency-enhancing technologies but also has needlessly caused the migration of jobs out of this country. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V of the bill will close this loophole so that owners of process patents can earn their rightful reward by preventing what amounts to overseas theft of their technology.

We must not delay making the necessary changes in the law to stimulate the creation and development of new technology, to increase this country's productivity, and to enable our industries to compete more effectively in international markets. We must act now. I therefore urge prompt consideration and passage of this legislative proposal.

RONALD REAGAN.

THE WHITE HOUSE, September , 1983.

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation

There are a number of issues that you should raise with Mr. Duberstein's office on our soon-to-be proposed innovation legislation:

- o Introducing the Bill. Senator Thurmond is more or less committed to introducing the bill. Baxter has had some positive prelimary discussions with Congressman Fish's staff. Congressman Rodino has apparently been putting off a meeting with Baxter. It would be desirable to set up a meeting of Schmults, Rodino, and Baxter.

- o When to Introduce. Rodino has scheduled a hearing on joint R&D bills on Wednesday, September 14th. It may be the only shot that Justice will have to testify on the Administration bill. Justice is working on rescheduling the hearing. If it is not rescheduled, the Administration should have the bill introduced on Monday, September 12th or Tuesday, September 13th, preferably the former.

- o Cosponsors. Justice has not yet talked to other people about being cosponsors. Possible candidates include: Senate - Sens. Hatch, Laxalt, Mathias (who would be very valuable to have on board); House - Reps. Moorhead, Hyde, and Zschau.

- o Touch Base. We should touch base with Senator Baker and Congressman Michel before introduction of the bill.

- o Transmittal Letter and Bill. The package should be introduced on September 12th.

cc: Roger B. Porter

8/19

THE WHITE HOUSE
WASHINGTON

Wendell,

Attached are:

1) Roger's response on the Justice Bill — He strongly feels that Productivity should remain in the bill's title.

2) Could you clear the attached transmittal letter? Bill Maxwell wanted it by today @ noon. I said that you and I could give him comments by Monday. I would feel much more comfortable w/ your clearance of it.

Johnson

THE WHITE HOUSE

WASHINGTON

August 17, 1983

MEMORANDUM FOR ROGER B. PORTER

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation Status

Everything is on track for Justice's proposed legislation amending the antitrust and intellectual property laws:

o Bill. OMB has cleared the bill. Baxter is sending over to OMB 15 copies of the cleared bill.

* o Transmittal letter. Baxter will send a transmittal letter by Thursday afternoon.

* o Presidential Statement. Baxter has reviewed our draft Presidential Statement and incorporated the changes made at the last CCCT meeting. Wendell and I will be going over the draft.

* o Fact Sheet. Baxter will send a draft by Thursday afternoon.

o President's Radio Address. Attached is a proposed radio address. It incorporates the changes made at the last CCCT meeting. Wendell okays the attached draft. Also attached is a memorandum from you to David Gergen, proposing that the President use the draft for his weekly radio address on Saturday, August 27. Can we shoot for August 27? Should wait until the President returns.

o Introducing the Bill. Wendell will coordinate with Nancy Risque on how the Administration should have the bill introduced. Baxter has already consulted with Senator Thurmond and Representatives Rodino and Fish.

o Press Conference. If the President talks about the bill on Saturday, August 27, it might be useful to have a press briefing at the White House on the following Monday, August 29. Bill Baxter and Secretary Baldrige would be logical candidates to give the briefing. Who should represent the White House at the briefing? GERGEN SHOULD DECIDE WHO HE WANTS.

o Name Change. Baxter entitled the bill, "The National Innovation and Productivity Act of 1983." Every title in the bill addresses innovation more directly than productivity (joint R&D, detrebling for intellectual property, copyright misuse, and process patents). For that reason, I would recommend that the name of the bill be changed to "The National Innovation Act of 1983." Moreover, it is simpler and easier to remember. Do you agree? Yes ___ No ✓.

cc: Wendell W. Gunn

Attachments

Productivity is a highly favorable term on the Hill. The length of the title is not particularly troublesome.

* Please send me copies when they are available.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

Naomi Sweeney	Take necessary action	☐
Lehman Li (Rm. 493)	Approval or signature	☐
Jeff Struthers	Comment	☐
Doug Pewitt	Prepare reply	☐
John Cooney	Discuss with me	☐
	For your information	☐
	See remarks below	☐

FROM Bill Maxwell X 3890 DATE 8/19/83

REMARKS

Attached is a draft copy of a Justice proposed letter for the President's signature, which would transmit to the Hill Justice's "National Productivity and Innovation Act of 1983."

There is a need to act quickly on this matter. Could I have your comments by Noon today (8/19/83).

Attachment

N.B. Please focus on the 3rd paragraph on page 3, which talks about "relatively minor modifications."

OMB FORM 4
REV AUG 70

To the Congress of the United States:

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The ability of the United States to improve industrial productivity and competitiveness will depend largely on our ability to create and develop new technologies. Advances in

technology provide our economy with the means to produce new or improved goods and services and to produce at lower cost those goods and services already on the market. It is difficult to overstate the importance of technological development to a strong and healthy United States economy. It has been estimated that advances in scientific and technological knowledge have been responsible for almost half of the increase in this country's labor productivity over the last 50 years. New technology also creates new jobs and gives this country an advantage in world markets. For example, the computer industry, which was in its infancy just a short time ago, employs more than 1.5 million Americans.

Although one often hears stories about new technologies being created by serendipity, the truth is that either the public or private sector must spend a great deal of time, money and effort to discover and develop new technologies. My Adminstration has moved to bolster reasearch and development in the public sector, by proposing in our 1984 budget to increase federal funding of R&D by 17 percent to $47 billion. However, public sector funding of R&D is not enough. The private sector, responding to the discipline of the marketplace, is often a more efficient creator and developer of new technologies. It is therefore important that our laws affecting the creation and development of new technologies properly encourage private sector R&D.

The antitrust and intellectual property laws have perhaps the most profound effect on private investment in R&D. The antitrust laws are designed to protect consumers from truly anticompetitive conduct. While the economy generally is best served by vigorous competition among independent businesses, the antitrust laws recognize that some cooperation, even among competitors, may be necessary to maximize the well-being of consumers. The creation and development of new technology is one area where such cooperation is frequently beneficial.

The intellectual property laws, for example those dealing with patents and copyrights, also serve to promote the interests of consumers. The promise of the financial reward provided by exclusive rights to intellectual property induces individuals to compete to create and develop new and useful technologies.

After reviewing the effect of the antitrust and intellectual property laws on the creation and development of new technologies and after consulting with members of Congress, I have concluded that a few, relatively minor modifications could significantly stimulate private sector R&D. The National Productivity and Innovation Act of 1983, which embodies those changes, is a package of four substantive proposals which deals with all phases of the innovation process.

Title II of the bill will insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in R&D projects. Joint ventures often may be necessary to lower the risk and cost

associated with R&D. So long as the venture does not threaten to facilitate price fixing or to reduce innovation, such ventures do not violate the antitrust laws. Nevertheless, the risk remains that some judges may ignore the beneficial aspects of joint R&D. This risk is unnecessarily magnified by the fact that a successful antitrust claimant is automatically entitled to three times the damages actually suffered.

Title II will alleviate the adverse deterrent effect that this risk may have on procompetitive joint R&D ventures. This title provides that the courts may not condemn a joint R&D venture under the antitrust laws without first considering its procompetitive benefits. In addition, Title II provides that a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the actual damage caused by its conduct. This combination of changes will encourage the formation of procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, it will do so with the minimal amount of bureaucratic interference in the functioning of those ventures.

If we are to assure that our laws stimulate investment in, and development of, new technologies, however, it is not enough merely to correct the adverse deterrent effect the antitrust laws may have on joint R&D. Rather, we must also assure that the antitrust and intellectual property laws allow--indeed encourage--those who create new technologies to bring their

technology to market in the most efficient manner. Only in this way can those who invest their time, money and effort in R&D be assured of earning the maximum legitimate reward.

Titles III and IV recognize that very frequently the most efficient way to develop new technology is to license that technology to others. Licensing can enable intellectual property owners to employ the superior ability of other enterprises to market technology more quickly and at lower cost. This can be particularly important for small businesses that do not have the ability to develop all possible applications of new technologies by themselves. However, the courts have not always been sympathetic to these procompetitive benefits of licensing.

Title III will prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. In addition, the title will eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Although those who suffer antitrust injury as a result of licensing will still be able to sue for their actual damages plus prejudgment interest, Title III will minimize the deterrence that the antitrust laws currently may have on potentially beneficial licensing of technology.

Similarly, Title IV will preclude the courts from using the doctrines of patent and copyright misuse to condemn the procompetitive licensing of intellectual property. Under Title IV, courts will not be able to refuse to enforce a valid patent

or copyright, on the ground that the conduct somehow suppressed competition, unless, after meaningful analysis, ~~they find~~ that the conduct constitutes a violation of the antitrust laws.

Finally, our proposal will close a loophole in the patent laws that not only has discouraged investment in efficiency-enhancing technologies but also has needlessly caused the migration of jobs out of this country. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V of the bill will close this loophole so that owners of process patents can earn their rightful reward by preventing what amounts to overseas theft of their technology.

We must not delay making the necessary changes in the law to stimulate the creation and development of new technology, to increase this country's productivity, and to enable our industries to compete more effectively in international markets. We must act now. I therefore urge prompt consideration and passage of this legislative proposal.

RONALD REAGAN.

THE WHITE HOUSE, September , 1983.