

June 19, 2007

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Republican  
Committee on the Judiciary  
United State Senate  
Washington, D.C. 20510

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Lamar S. Smith  
Ranking Republican  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Howard L. Berman  
Chairman  
Subcommittee on Courts, the  
Internet and Intellectual Property  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Howard Coble  
Ranking Republican  
Subcommittee on Courts, the  
Internet and Intellectual Property  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

SENT VIA: EMAIL AND FACSIMILE

Dear Chairman Leahy, Chairman Conyers, Chairman Berman, Senator Specter,  
Representative Smith, and Representative Coble:

The more than 200 undersigned organizations are writing to voice serious concerns with certain provisions of The Patent Reform Act of 2007, S. 1145 and H.R. 1908. While we share the goal of making America more innovative and competitive, we find that certain aspects of the legislation will inadvertently accomplish the exact opposite by undermining the value of patents. This will hinder innovation across the diverse sectors of the American economy we represent, including academia, agriculture, alternative energy, biotechnology, chemical, electronics, environmental technology, financial services, information technology, life sciences, manufacturing, nanotechnology, and telecommunications.

The United States has the most effective patent system in the world. The value America places on intellectual property has driven huge investments in research and development and resulted in critical inventions in virtually every field of endeavor. As Congress moves forward with its efforts to modernize the patent system, it must do so in a way that values and advances all American innovators. In our view, making the legislation effective and balanced requires four significant changes.

First, the section on apportionment of damages should be deleted from the legislation. The language is unclear, will increase litigation, and will force judges and juries to make complex calculations for which they are ill equipped. Chief Judge Paul Michel of the U.S. Court of Appeals for the Federal Circuit has said that the provision on apportionment of damages is unworkable and could throw the system into chaos. The U.S. Department of Commerce, parent agency for the Patent and Trademark Office (PTO) itself, has said that there is no reason to change current law in this area. Under current law, courts have discretion to evaluate the relevant facts of each case and flexibility to award appropriate damages on a case-by-case basis.

Second, we are united in our opposition to a new, open-ended, administrative post-grant review mechanism, which we believe is unreasonable and should be deleted. The post-grant review system as written in the bill could be used by virtually any third party that seeks to harass the patent holder. Patent owners need more certainty – not less -- that they can enforce their patents, invest and hire to expand their businesses, and market their innovations free from unending harassment. An open-ended post-grant opposition procedure would discourage investment and have a chilling effect on America's innovation engine.

Third, the PTO should not be granted overbroad and unprecedented substantive rulemaking authority. The U.S. Constitution expressly grants Congress the power to protect intellectual property. Delegating that authority to an administrative agency would be an unwise abdication of Congressional authority. Granting the PTO unfettered rulemaking authority would also create instability in the patent system because, over the 20-year term of a patent, the PTO could effect multiple changes to substantive patent law through rulemaking. This could significantly alter the value of existing patents. Congress and the courts are better suited for developing substantive standards through the legislative process.

Finally, the legislation must provide adequate grace periods to allow patent holders to adjust to changes to aspects in patent laws and rules, such as filing requirements. Academic institutions, small companies, and independent inventors need adequate flexibility to adapt to the mandates of a first-to-file system, and we believe the legislation as currently drafted lacks such flexibility.

We strongly urge you to make these important changes to the legislation, and we stand ready to work with you to craft the modifications. Like you, we want the most effective patent system for our country, and we believe the changes outlined above will help make S. 1145/H.R. 1908 more effective and balanced for all industries. We look forward to working with you toward this mutual goal.

Thank You.

cc:

Members, Senate Committee on the Judiciary; and  
Members, House Committee on the Judiciary.

## **National Organizations**

Association of University Technology  
Managers (AUTM)  
Northbrook, IL

Biotechnology Industry Organization  
Washington, DC

CropLife America  
Washington, DC

Innovation Alliance  
Washington, DC

Institute of Electrical and Electronics  
Engineers (IEEE)-USA  
Washington DC

Medical Device Manufacturers  
Association  
Washington, DC

NanoBusiness Alliance  
Skokie, IL

Small Business Exporters Association  
Of the United States  
Washington, DC

Small Business Technology Council  
Washington, DC

The Center for Small Business and the  
Environment  
Washington, DC

## **State and Individual Organizations**

Abbott  
Abbott Park, IL

Accelerated Technologies, Inc.  
Hackensack, NJ

Acorn Cardiovascular Inc.  
St. Paul, MN

Adams Capital Management  
Sewickley, PA

Adroit Medical Systems, Inc.  
Loudon, TN

Advanced Diamond Technologies, Inc.  
Romeoville, IL

Advanced Medical Optics, Inc.  
Santa Ana, CA

Advanced Neuromodulation Systems,  
Inc.  
Plano, TX

Aero-Marine Company  
Port Townsend, WA

ALD NanoSolutions, Inc.  
Broomfield, CO

Allergan, Inc.  
Irvine, CA

ALIO Industries  
Wheat Ridge, CO

Almyra, Inc.  
Boxborough, MA

AmberWave Systems Corporation  
Salem, NH

Amylin Pharmaceuticals  
San Diego, CA

AngioDynamics, Inc.  
Queensbury, NY

Applied Medical  
Rancho Santa Margarita, CA

Applied Nanotech, Inc.  
Austin, TX

Argentis Pharmaceuticals, LLC  
Memphis, TN

Arizona BioIndustry Association  
Scottsdale, AZ

ARYx Therapeutics  
Fremont, CA

Ascenta Therapeutics, Inc.  
San Diego, CA

Asthmatx, Inc.  
Mountain View, CA

Aware, Inc.  
Bedford, MA

Baxa Corporation  
Englewood, CO

BayBio  
South San Francisco, CA

BioCardia, Inc.  
South San Francisco, CA

BIOCOM  
San Diego, CA

Biogen Idec  
Cambridge, MA

BioOhio  
Columbus, OH

Biotechnology Council of New Jersey  
Trenton, NJ

BlazeTech Corporation  
Cambridge, MA

Boston Scientific Corporation  
Boston, MA

BuzzLogic  
San Francisco, CA

California Healthcare Institute  
La Jolla, CA

Canopy Ventures  
Lindon, UT

Carbide Derivative Technologies  
Chicago, IL

Cardiac Concepts, Inc.  
Minnetonka, MN

CardioDynamics  
San Diego, CA

Cell Genesys, Inc.  
South San Francisco, CA

Celgene Corporation  
Summit, NJ

Center 7, Inc.  
Lindon, UT

Cincinnati Sub-Zero Products  
Cincinnati, OH

CogniTek Management Systems, Inc.  
Northfield, IL

Colorado Bioscience Association  
Denver, CO

Conceptus, Inc.  
Mountain View, CA

Connecticut United for Research  
Excellence  
New Haven, CT

Coronis Medical Ventures  
Sunnyvale, CA

Cornell University  
Ithaca, NY

Corning Incorporated  
Corning, NY

Cummins-Allison Corporation  
Mt. Prospect, IL

Cryptography Research  
San Francisco, CA

CVRx Inc.  
Maple Grove, MN

Dais Analytic Corporation  
Odessa, FL

Dartmouth Regional Technology Center,  
Inc.  
Lebanon, NH

Deltanoid Pharmaceuticals  
Madison, WI

Digimarc Corporation  
Beaverton, OR

DirectPointe  
Lindon, UT

Dura-Line Corporation  
Knoxville, TN

Dynatronics Co.  
Cottonwood Heights, UT

Edwards Lifesciences  
Irvine, CA

Elan Pharmaceuticals, Inc.  
San Diego and South San Francisco, CA

Ellman Innovations LLC  
Oceanside, NY

Enterprise Partners Venture Capital  
La Jolla, CA

Evalue, Inc  
Menlo Park, CA

Fallbrook Technologies Inc.  
San Diego, CA

FarSounder, Inc.  
Warwick, RI

Footnote.com  
Lindon, UT

Gambro BCT  
Lakewood, CO

Genomic Health, Inc.  
Redwood City, CA

Gen-Probe Incorporated  
San Diego, CA

Georgia Biomedical Partnership  
Atlanta, GA

Genzyme  
Cambridge, MA

Glacier Cross, Inc.  
Kalispell, MT

Glenview State Bank  
Glenview, IL

Hawaii Science & Technology Council  
Honolulu, HI

HealthCare Institute of New Jersey  
Bridgewater, NJ

HeartWare, Inc.  
Framingham, MA

Helius, Inc.  
Lindon, UT

iBIO  
Chicago, IL

Imago Scientific Instruments  
Madison, WI

Impulse Dynamics (USA), Inc.  
Orangeburg, NY

Indiana Health Industry Forum  
Indianapolis, IN

Institute of Electrical and Electronics  
Engineers (IEEE)-USA  
Washington DC

InterDigital Communications  
Corporation  
King of Prussia, PA

Intermolecular, Inc.  
San Jose, CA

Invitrogen Corporation  
Carlsbad, CA

Iowa Biotechnology Association  
Des Moines, IA

ISTA Pharmaceuticals  
Irvine, CA

Jazz Pharmaceuticals, Inc.  
Palo Alto, CA

Life Science Alley  
St. Louis Park, MN

LITMUS, LLC  
Little Rock, AR

LSI Corporation  
Allentown, PA

Lux Capital Management  
New York, NY

Luxul Corporation  
Salt Lake City, UT

Masimo Corporation  
Irvine, CA

Massachusetts Biotechnology Council  
Cambridge, MA

MassMEDIC  
Boston, MA

Maxygen Inc.  
Redwood City, CA

Medical College of Wisconsin  
Milwaukee, WI

MedImmune, Inc.  
Gaithersburg, MD

Metabasis Therapeutics, Inc.  
San Diego, CA

Metabolex, Inc.  
Hayward, CA

Metabolix, Inc.  
Cambridge, MA

Metacure (USA), Inc.  
Orangeburg, NY

MGI Pharma Inc.  
Bloomington, MN

MichBio  
Ann Arbor, MI

Michigan Small Tech Association  
Lansing, MI

Mohr, Davidow Ventures  
Menlo Park, CA

Monsanto Company  
St. Louis, MO

NanoBioMagnetics, Inc. (NBMI)  
Edmond, OK

NanoInk, Inc.  
Skokie, IL

NanoIntegrus, Inc.  
Evanston, IL

Nanomix, Inc.  
Emeryville, CA

Nanophase Technologies  
Romeoville, IL

NanoProducts Corporation  
Longmont, CO

Nanosys, Inc.  
Palo Alto, CA

Nantero, Inc.  
Woburn, MA

Nektar Therapeutics  
San Carlos, CA

Neoconix, Inc.  
Sunnyvale, CA

Neuronetics, Inc.  
Malvern, PA

NeuroPace  
Mountain View, CA

Neuro Resource Group (NRG)  
Plano, TX

New England Innovation Alliance  
Boston, MA

New Hampshire Biotechnology Council  
Portsmouth, NH

New Mexico Biotechnical and  
Biomedical Association  
Albuquerque, NM

New York Biotechnology Association  
New York, NY

North Carolina Biosciences  
Organization  
Research Triangle Park, NC

North Dakota State University  
Fargo, ND

Novartis Corporation  
New York, NY

Novasys Medical Inc.  
Newark, CA

NovoNordisk  
Princeton, NJ

NUCRYST Pharmaceuticals, Inc.  
Wakefield, MA

NuVasive, Inc.  
San Diego, CA

Nuvelo, Inc.  
San Carlos, CA

OpenCEL, LLC  
Glencoe, IL

Palmetto Biotechnology Alliance  
Columbia, SC

Pennsylvania Bio  
Malvern, PA

Physical Sciences Inc.  
Andover, MA

PointeCast Corporation  
Lindon, UT

Power Innovations International  
Lindon, UT

PowerMetal Technologies, Inc.  
Carlsbad, CA

Preformed Line Products  
Mayfield Village, OH

ProRhythm, Inc.  
Ronkonkoma, NY

Pure Plushy Inc.  
Lombard, IL

QUALCOMM Inc.  
San Diego, CA

QuantumSphere, Inc.  
Santa Ana, CA

QuesTek Innovations LLC  
Evanston, IL

Radiant Medical, Inc.  
Redwood City, CA

Retractable Technologies, Inc.  
Little Elm, TX

Rensselaer Polytechnic Institute  
Troy, NY

S & C Electric Company  
Chicago, IL

Salix Pharmaceuticals, Inc.  
Morrisville, NC

Sangamo Biosciences, Inc.  
Richmond, CA

Semprius, Inc  
Durham, NC

Small Business Association of Michigan  
Economic Development Center  
Lansing, MI

Smart Bomb Interactive  
Salt Lake City, UT

Smile Reminder  
Lindon, UT

SmoothShapes, Inc.  
Merrimack, NH

Solera Networks  
Lindon, UT

Southern California Biomedical Council  
Los Angeles, CA

South Dakota Biotech Association  
Sioux Falls, SD

Spiration, Inc.  
Redmond, WA

State of New Hampshire  
Department of Resources and Economic  
Development  
Concord, NH

StemCells  
Palo Alto, CA

SurgiQuest, Inc.  
Orange, CT

Symyx Technologies, Inc.  
Santa Clara, CA

Tech Council of Maryland/MdBio  
Rockville, MD

Technology Patents & Licensing  
Doylestown, PA

Tennessee Biotechnology Association  
Nashville, TN

Tessera, Inc.  
San Jose, CA

Texas Healthcare and Bioscience  
Institute  
Austin, TX

The Cassie-Shipherd Group  
Newburyport, MA

The Norseman Group  
Parsippany, NJ

The Standup Bed Company  
Lubbock, TX

The Stella Group, Ltd.  
Arlington, VA

Three Arch Partners  
Porto Valley, CA

University of California System

University of Maryland  
College Park, MD

University of New Hampshire  
Durham, NH

University of North Carolina System

University of Utah  
Salt Lake City, UT

University of Wisconsin-Madison  
Madison, WI

USGI Medical  
San Clemente, CA

Vanderbilt University and Medical  
Center  
Nashville TN

Virent Energy Systems, Inc.  
Madison, WI

Virginia Biotechnology Association  
Richmond, VA

Visidyne, Inc.  
Burlington, MA

VisionCare Ophthalmologic Technologies,  
Inc.  
Saratoga, CA

Washington Biotechnology &  
Biomedical Association  
Seattle, WA

WaveRx, Inc.  
Waltham, MA

Wayne State University  
Detroit, MI

Wescor, Inc.  
Logan, UT

Wilson Sonsini Goodrich & Rosati  
Palo Alto, CA

Wisconsin Alumni Research Foundation  
(WARF)  
Madison, WI

Wisconsin Biotechnology and Medical  
Device Association  
Madison, WI