

January 21, 2015

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable John Conyers  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chuck Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

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

Dear Chairman Goodlatte, Chairman Grassley, Rep. Conyers, and Senator Leahy:

The undersigned represent a broad coalition whose members represent the majority of the nation's patent holders and inventors. We are a diverse array of American innovators, ranging from universities and non-profit foundations, to start-ups and small businesses, to manufacturing, technology, and life sciences companies. Together we represent thousands of organizations that employ millions of workers in the United States. We all believe that the future of the U.S. economy, including domestic job growth and our competitive advantage in the global economy, depends on a strong patent system that incentivizes innovators to invent and protects their inventions from unfair copying by others.

We appreciate the hard work you and your staffs have undertaken to craft a bill to target abusive practices in patent litigation, and we accept your challenge to our member groups to work with you to craft a responsible bill to address those abuses. As we have demonstrated in the past, we are willing to work with you and other stakeholders to develop targeted and measured reforms that address harmful patent enforcement practices. However, we will continue to strongly oppose legislation that would weaken the overall patent system and thereby diminish innovation and job creation in the United States.

In addition, there have been several major judicial and administrative developments in patent law since the last time your committees fully considered these issues and drafted proposed legislation. As a result of these developments, we are even more concerned that some of the measures under consideration over the past year go far beyond what is necessary or desirable to combat abusive litigation. Indeed, new patent lawsuit filings already have dropped dramatically – 40 percent, year over year, from September 2013 to 2014. Recent developments include the following:

- The Supreme Court decided five patent cases this past year, including *Alice Corporation v. CLS Bank*, *Nautilus v. Biosig Instruments*, *Limelight Networks v. Akamai Technologies*, *Octane Fitness v. ICON Health & Fitness*, and *Highmark Inc. v. Allcare Health Management Systems*, that are already making it easier to defeat patents, including the kind of patents that often are asserted in abusive litigation, and disincentivizing the

bringing of meritless claims. They certainly require thorough Congressional consideration as changes to the patent system are debated.

- The Leahy-Smith America Invents Act (AIA), which includes a number of provisions to increase patent quality and reduce abusive practices, was fully implemented less than two years ago, and its effects are only now beginning to take hold. For example, the AIA created new procedures – “inter partes review” (IPR) and “covered business method patent review” (CBM) – to allow anyone to challenge patents in a fast, relatively inexpensive proceeding before the Patent Trial and Appeal Board (PTAB). These administrative proceedings are already impacting the litigation landscape: judges in patent cases are now granting 80% of all motions to stay patent litigation if the patent is also involved in a parallel IPR or CBM proceeding. This is not to suggest that improvements are not needed with respect to implementation by the U.S. Patent & Trademark Office (USPTO), particularly with respect to concerns raised that these proceedings may be structured in a way that fails to afford basic due process to patent owners. In just two years since the USPTO implemented the new procedures in late 2012, petitioners have challenged claims of more than 2,300 patents. In concluded proceedings, fully 75% of the involved claims have been found unpatentable and only about 20% of patents have survived the proceeding with no changes.
- This past October, the Judicial Conference of the United States adopted changes to the Federal Rules of Civil Procedure that will ensure that patent cases meet the heightened pleading standards required of all other federal cases. The changes also will ensure that discovery in patent litigation will be “proportional to the needs of the case,” reducing the ability of patent plaintiffs to use unnecessary discovery requests to drive up costs for defendants in an effort to force unwarranted settlements. These rule changes make any statutory provision heightening pleading standards or limiting the scope of discovery in patent cases unnecessary and repetitive, since courts now have been directed to limit excessive and abusive discovery requests and ensure adequately described pleadings in patent cases. The rule changes are currently pending before the Supreme Court and are expected to be sent to Congress in early 2015.
- The Federal Trade Commission and state attorneys general also are aggressively using their authority to combat abusive patent demand letters and protect small businesses and consumers from unscrupulous practices. Instead of collecting settlement fees, senders of mass demand letters now find themselves mired in legal proceedings and their patents subject to challenges. Settlements between MPHJ Technology Investments LLC and the New York Attorney General and the FTC in January and November show the effectiveness of consumer protection and unfair competition laws at protecting small businesses from abusive and deceptive representations in demand letters.

Taken together, these judicial and administrative developments, and the plunge in the patent litigation rate, have fundamentally changed the landscape under which patent legislation should be considered. As Congress considers potential changes to the patent system that threaten the constitutionally-guaranteed property rights of innovators, it must assess the full

effects of the AIA, changes to the Federal Rules of Civil Procedure, the case law developments, and these administrative developments.

We look forward to working with you and your colleagues to make improvements to patent law that protect small businesses, consumers, and the general public from abusive patent practices, while zealously guarding the United States' competitive edge as the dominant global leader in innovation.

Thank you for your consideration of our views.

Sincerely,

Abcam  
Cambridge, MA

Abengoa Bioenergy  
Chesterfield, MO

Access Technologies Group, Inc.  
New Canaan, CT

Acorda Therapeutics  
Ardsley, NY

Actuated Medical, Inc.  
Bellefonte, PA

ADA Technologies, Inc.  
Littleton, CO

Advanced Technology Ventures (ATV)  
Palo Alto, CA

Aegerion Pharmaceuticals  
Cambridge, MA

Alexion Pharmaceuticals  
Cheshire, CT

Alnylam Pharmaceutical  
Cambridge, MA

American Seed Trade Association  
Alexandria, VA

Amgen  
Thousand Oaks, CA

Amicus Therapeutics  
Cranbury, NJ

AMJET Turbine Systems, LLC  
Keokuk, IA

Analytic Design Laboratories  
Plain City, UT

Antaya Science and Technology  
Hampton, NH

AquaBounty Technologies  
Maynard, MA

Aquadation Technologies LLC  
Austin, TX

Architecture Technology Corporation  
Eden Prairie, MN

Arizona BioIndustry Association  
Chandler, AZ

Association of American Universities  
Washington, DC

Association of Public Land Grant Universities  
Washington, DC

AstraZeneca Pharmaceuticals  
Wilmington, DE

Athersys  
Cleveland, OH

Atlas Venture  
Cambridge, MA

aTyr Pharma  
San Diego, CA

Auxilium Pharmaceuticals  
Chesterbrook, PA

Aware, Inc.  
Bedford, MA

Bavarian Nordic  
Mountain View, CA

Bay Area In-House MedTech Attorneys (BAIMA)

BayBio  
South San Francisco, CA

Bayer CropScience LP  
Research Triangle Park, NC

Bennett Aerospace  
Cary, NC

Bi-Level Technologies  
Encinitas, CA

Biocom  
San Diego, CA

BioFlorida, Inc.  
West Palm Beach, FL

Biogen Idec  
Cambridge, MA

BioHouston  
Houston, TX

Bio Nebraska Life Sciences Association  
Omaha, NE

BioNJ  
Trenton, NJ

BioOhio  
Columbus, OH

BioScience Association of Maine  
Biddeford, ME

Biotechnology Industry Organization (BIO)  
Washington, DC

bluebird bio  
Cambridge, MA

BrainScope Company, Inc.  
Bethesda, MD

Brew Data LLC  
Cedar Rapids, IA

California Healthcare Institute – CHI  
La Jolla, CA

Cedars-Sinai Medical Center  
Los Angeles, CA

Celgene  
Summit, NJ

Center for Health Care Services  
San Antonio, TX

Cianna Medical, Inc.  
Aliso Viejo, CA

Ciencia, Inc.  
East Hartford, CT

Cleveland Medical Devices Inc.  
Cleveland, OH

Colorado BioScience Association  
Denver, CO

Colorado School of Mines  
Golden, CO

CoLucid Pharmaceuticals  
Durham, NC

Conatus Pharmaceuticals  
San Diego, CA

CONNECT  
San Diego, CA

Cotera, Inc.  
Menlo Park, CA

CropLife America  
Washington, DC

CSL Behring  
King of Prussia, PA

Cummins Allison Corporation  
Mount Prospect, IL

CURE – Connecticut United for Research Excellence, Inc.  
New Haven, CT

CyberLogic, Inc.  
New York, NY

Cybernet Systems Corporation  
Ann Arbor, MI

CymaBay Therapeutics  
Newark, CA

Dallas IEEE  
Dallas, TX

Delaware Bio  
Newark, DE

Design Interactive, Inc.  
Orlando, FL

Digimarc Corporation  
Beaverton, OR

Dolby Laboratories, Inc.  
San Francisco, CA

DSM North America  
Parsippany, NJ

DuPont  
Johnston, IA

Dynatronics Corporation  
Salt Lake City, UT

Eagle Forum  
St. Louis, MO

EccoCast Communications  
Iowa City, IA

Edison Nation  
Charlotte, NC

Electric Drivetrain Technologies LLC  
Moab, UT

Electron Technologies, Inc.  
Chantilly, VA

ElliptiGO Inc.  
Solana Beach, CA

Engine Research Associates, Inc.  
Fort Wayne, IN

Enteromedics  
Saint Paul, MN

Entrepreneurs for Growth  
Burke, VA

Enventys  
Charlotte, NC

Exagen Diagnostics  
Albuquerque, NM

Exemplar Genetics, LLC  
Sioux City, IA

ExploraMed Development, LLC  
Mountain View, CA



ExploraMed NC7, Inc.  
Mountain View, CA

Fallbrook Technologies Inc.  
Cedar Park, TX

FishEye Software, Inc.  
Maynard, MA

Flocel Inc.  
Cleveland, OH

FM Technologies, Inc.  
Chantilly, VA

ForSight Labs LLC  
Menlo Park, CA

ForSight Vision4, Inc.  
Menlo Park, CA

ForSight Vision6, Inc.  
Menlo Park, CA

FORUM Pharmaceuticals  
Watertown, MA

The Foundry, LLC  
Menlo Park, CA

Gain ICs, LLC  
Colorado Springs, CO

Genzyme  
Cambridge, MA

Georgia Bio  
Atlanta, GA

GlobeImmune  
Louisville, CO

GlycoMimetics  
Gaithersburg, MD

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Memphis, TN

Great Lakes NeuroTechnologies Inc.  
Cleveland, OH

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Greenwood Village, CO

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Irvine, CA

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Basin, MT

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Deerfield, IL

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Washington, DC

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Hampton, NJ

Illinois Biotechnology Industry Organization  
Chicago, IL

Immune Design  
Seattle, WA

Indiana Health Industry Forum  
Indianapolis, IN

Indiana Manufacturers Association  
Indianapolis, IN

Industry-University Research Center, Inc. (INDUNIV)  
San Juan, PR

Infinity Pharmaceuticals  
Cambridge, MA

Innovation Alliance  
Washington, DC

Innovative Surface Technologies, Inc.  
Saint Paul, MN

Innovative Technology Applications Company, LLC  
Chesterfield, MO

Intercept Pharmaceuticals  
New York, NY

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Wilmington, DE

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Troy, NY

Inventors Center of Kansas City  
Kansas City, MO

Invocon, Inc.  
Conroe, TX

Iowa Biotechnology Association  
Des Moines, IA

Iowa Inventors Group  
Cedar Rapids, IA

IsoTherapeutics Group, LLC  
Angleton, TX

ItsOn, Inc.  
Redwood City, CA

KBS Automist  
Baxter, MN

Kentucky Life Sciences Council  
Louisville, KY

Keystone Aerospace  
Austin, TX

Keystone Synergistic Enterprises, Inc.  
Port St. Lucie, FL

Kineta, Inc.  
Seattle, WA

Kinetic Resolve, Inc.  
Stillwater, MN

Licensing Executives Society (USA and Canada), Inc.  
Alexandria, VA

LifeScience Alley  
St. Louis Park, MN

Life Science Tennessee  
Nashville, TN

Lightstone Ventures  
Palo Alto, CA

MacroGenics  
Rockville, MD

Maetrics LLC  
Indianapolis, IN

Magnet Optimization Research Engineering (M.O.R.E.), LLC  
Reading, MA

Massachusetts Biotechnology Council (MassBio)  
Cambridge, MA

MaxCyte  
Gaithersburg, MD

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Conrad, IA

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Washington, DC

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Redwood Falls, MN

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St. Louis, MO

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Pleasanton, CA

NeuroPace  
Mountain View, CA

NeuroWave Systems Inc.  
Cleveland Heights, OH

New Venture Advisors  
Manchester, NH

New Mexico Biotechnology & Biomedical Association  
Albuquerque, NM

NewYorkBIO  
New York, NY

North Carolina Biosciences Organization (NCBIO)  
Research Triangle Park, NC

Nuelle, Inc.  
Mountain View, CA

OncoMed Pharmaceuticals  
Redwood City, CA

Open Innovators  
Hebron, CT

Opexa Therapeutics  
The Woodlands, TX

Orbital Research Inc.  
Cleveland, OH

Oregon Bioscience Association  
Portland, OR

Orexigen Therapeutics  
La Jolla, CA

Orthopedic Venture Partners  
Minneapolis MN

OvaScience  
Cambridge, MA

Pacira Pharmaceuticals  
Parsippany, NJ

Patent Bakery LLC  
Austin, TX

Patent Office Professional Association  
Alexandria, VA

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Wayne, PA

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Washington, DC

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South San Francisco, CA

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South Plainfield, NJ

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San Diego, CA

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East Hartford, CT

Quantum Interface  
Austin, TX

Reaction Biology Corporation  
Malvern, PA

Receptos  
San Diego, CA

Recombinetics  
Saint Paul, MN

Regulus Therapeutics  
San Diego, CA

Relypsa  
Redwood City, CA

Rio Grande Valley Diabetes Association  
Edinburg, TX

Rocky Mountain Technologies Inc.  
Basin, MT

SAb Biotherapeutics  
Sioux Falls, SD

Safety First USA, Inc.  
Marion, IA

SCBIO  
Greenville, SC

Schaefer Technologies, Inc.  
Indianapolis, IN

Science & Sensors Technologies  
Los Angeles, CA

Small Business Technology Council  
Washington, DC

Smiths Medical  
Dublin, OH

SoCalBio  
Los Angeles, CA

Sofinnova Ventures  
Menlo Park, CA

Solace Therapeutics  
Framingham, MA



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Sioux Falls, SD

Southwest Sciences, Inc.  
Santa Fe, NM

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San Antonio, TX

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Greenwich, CT

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Bethesda, MD

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Marlborough, MA

Syndax Pharmaceuticals  
Waltham, MA

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San Jose, CA

Texas BioAlliance  
Houston, TX

Texas Eagle Forum  
Dallas, TX

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Austin, TX

Texas Life-Sciences Collaboration Center  
Georgetown, TX

Texas Life Science Foundation  
Austin, TX

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Indianapolis, IN

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King of Prussia, PA

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Menlo Park, CA

Unilife Corporation  
York, PA

U.S. Business and Industry Council  
Washington, DC

U.S. Startups and Inventors for Jobs  
Washington, DC

Valeritas  
Bridgewater, NJ

Vermont BioSciences Alliance  
Burlington, VT

Versartis  
Menlo Park, CA

Virginia Biotechnology Association (Virginia Bio)  
Richmond, VA

Vitae Pharmaceuticals  
Fort Washington, PA

Washington Biotechnology & Biomedical Association (WBBA)  
Seattle, WA

Wisconsin Alumni Research Foundation  
Madison, WI

Yorktown Technologies  
Austin, TX

Zatorski Coating Co., Inc.  
East Hampton, CT

cc: The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable John Cornyn  
Majority Whip  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Minority Whip  
United States Senate  
Washington, DC 20510

The Honorable John Boehner  
Speaker  
United States House of Representatives  
Washington, DC 20515

The Honorable Nancy Pelosi  
Minority Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Steny Hoyer  
Minority Whip  
United States House of Representatives  
Washington, DC 20515

Members of the House Judiciary Committee

Members of the Senate Committee on the Judiciary