

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

Gradient Technologies LLC
Memphis, TN

Great Lakes NeuroTechnologies Inc.
Cleveland, OH

Green Tape LLC
Greenwood Village, CO

Ground Zero Pharmaceuticals, Inc.
Irvine, CA

HF Holding, Inc.
Basin, MT

Hammersmith Ventures
Austin, TX

Horizon Pharma
Deerfield, IL

Hydra Biosciences
Cambridge, MA

iChromatography/Analtech, Inc.
Newark, DE

IEEE-USA
Washington, DC

Ikaria, Inc.
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

InterDigital, Inc.
Wilmington, DE

InterScience, Inc.
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

MCG BioComposites, LLC
Cedar Rapids, IA

MedCara Pharmaceuticals
Conrad, IA

Medical Device Manufacturers Association
Washington, DC

Membrane Technology and Research, Inc.
Newark, CA

Merck & Co., Inc.
Kenilworth, NJ

MichBIO
Ann Arbor, MI

Minnesota Inventors Congress
Redwood Falls, MN

Miramar Labs, Inc.
Santa Clara, CA

Missouri Biotechnology Association (MOBIO)
Jefferson City, MO

Modulated Imaging
Irvine, CA

Monsanto
St. Louis, MO

Montana BioScience Alliance
Billings, MT

Morgenthaler Ventures
Menlo Park, CA

National Small Business Association
Washington, DC

Navidea Biopharmaceuticals
Dublin, OH

NAVSYS Corporation
Colorado Springs, CO

Neotract, Inc.
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

Pennsylvania Bio
Wayne, PA

PhRMA
Washington, DC

Precision Combustion, Inc.
North Haven, CT

Principia Biopharma
South San Francisco, CA

Propel LLC
Pawtucket, RI

PTC Therapeutics
South Plainfield, NJ

Qualcomm
San Diego, CA

Qualtech Systems, Inc.
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

South Dakota Biotech Association
Sioux Falls, SD

Southwest Sciences, Inc.
Santa Fe, NM

Startech International
San Antonio, TX

Student Employment Software, LLC
Greenwich, CT

Sucampo Pharmaceuticals, Inc.
Bethesda, MD

Sunovion Pharmaceuticals
Marlborough, MA

Syndax Pharmaceuticals
Waltham, MA

Tessera Technologies, Inc.
San Jose, CA

Texas BioAlliance
Houston, TX

Texas Eagle Forum
Dallas, TX

Texas Healthcare and Bioscience Institute
Austin, TX

Texas Life-Sciences Collaboration Center
Georgetown, TX

Texas Life Science Foundation
Austin, TX

Theoris Group Inc.
Indianapolis, IN

Thomson Licensing LLC
Princeton, NJ

Trevena
King of Prussia, PA

Twelve, Inc.
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