

December 18, 2007

The Honorable Wayne Allard
United States Senate
Washington, DC 20510

Dear Senator Allard:

The numerous undersigned organizations represent innovative companies in diverse industries across Colorado. We are writing to express our concern regarding S. 1145, "The Patent Reform Act of 2007."

While we welcome efforts to make valuable improvements to the U.S. patent system, we clearly oppose S. 1145 as approved by the Senate Judiciary Committee. This bill contains provisions that would create uncertainty and weaken the enforceability of issued patents. In addition, the bill would weaken incentives for innovation, would weaken the ability of the small/medium business sector to compete with large corporations, would deter investment in technology development, and open the gates to infringing products made offshore. Some of the proposed provisions, such as an expanded apportionment of damages, an indefinite post-grant opposition process, excessive venue restrictions, burdensome and expensive mandatory search requirements, and unworkable interlocutory appeal provisions, pose serious negative consequences for continued innovation and American technological leadership in a competitive global economy. In addition, the bill codifies the current inequitable conduct doctrine, rather than making broadly supported reforms to eliminate litigation abuse of the doctrine. We have attached an addendum that elaborates on these issues, and that expresses our views in more detail.

No compelling case has been made for a bill written in this fashion. Arguments by proponents are based on claims of a crisis in the current patent system that does not exist and are supported by selective assertions which do not hold up under scrutiny. Importantly, the bill fails to take into account the impact of numerous court decisions and administrative rules that have occurred recently regarding major patent issues. We believe the authors of the legislation must make fundamental changes to the legislation if it is to have a positive effect on all American innovators.

We would like to arrange a meeting with you, in Colorado, to discuss this matter over the holiday break. In that meeting, we will urge you to vote against the bill on the Senate floor, unless such fundamental changes are made. We are currently working with your staff to arrange such a meeting.

We remain committed to strengthening the U.S. patent system in ways that will preserve and promote innovation across the broad spectrum of the American economy, and we look forward to meeting with you to express our concerns.

Sincerely,

Amaix, Inc. (Arvada)
Aspiration Innovation, Inc. (Fort Collins)
Cable Television Laboratories, Inc.
(Louisville)
Cochran Freund & Young LLC (Fort
Collins)
Colorado BioScience Association (Denver)
Colorado Photonics Industry Assoc.
(Denver)
Dako Colorado, Inc. (Fort Collins)
Electronic Analysis & Repair, LLC
(Greeley)
Educators Outlet (Fort Collins)
Financial Health Systems, Inc. (Centennial)
Gates Corporation (Denver)

Hunt Control Systems, Inc. (Fort Collins)
Ice Energy, Inc. (Windsor)
Jorgensen Laboratories, Inc. (Loveland)
Keeton Industries, Inc. (Wellington)
L&T Riser LLC (Commerce City)
LandNet Corporation (Loveland)
Look Dynamics, Inc. (Longmont)
LSI Logic Corporation (Colorado Springs
and Fort Collins)
Meadowlark Optics, Inc. (Frederick)
MKS Instruments, Inc. (HPS Products
Division) (Boulder)
MX Logic (Denver)
OmniCharts, LLC (Highlands Ranch)
OmniTech International, Inc. (Arvada)

Otter Products LLC (Fort Collins)
PE Fusion, LLC (Fort Collins)
Qualcomm (Boulder)
S3, Inc. (Fort Collins)
So Sound Solutions LLC (Lafayette)

Ranch-Way Feed Mills (Fort Collins)
Snaptron, Inc. (Windsor)
Terra Moya Aqua, Inc. (Cheyenne, WY)
Walker Manufacturing Company (Fort
Collins)

ADDENDUM TO LETTER TO SENATOR ALLARD

One of the most important reasons that the United States is the most innovative country in the world is the United States patent system. The U.S. patent system is currently the best and strongest patent system, and, as such, provides the motivation for U.S. innovation.

The U.S. patent system is based on the “Contract Theory of Patents.” Under this Theory, inventors are granted an exclusive right to their inventions if they disclose these inventions in patents in a manner that would enable one of ordinary skill in the art to make and use the invention, provide the best mode contemplated by the inventor for carrying out the invention, and provide a written description of the invention. Disclosure of these inventions, in this manner, allows others to make improvements to those inventions. Without the original disclosure of these inventions, the flow of knowledge and advancement of technology is slowed or worse, prevented. A strong patent system, such as the U.S. patent system, provides a high degree of incentive for inventors to disclose their inventions and obtain exclusive rights to those inventions. A weak patent system has the opposite effect.

It is clear that most of the important cutting-edge innovation that is critical to the economy of Colorado is produced by the highly entrepreneurial, small/medium business sector and universities. Many of these small and medium size businesses take risks in developing technologies and products that larger companies ignore until the technologies and markets develop enough to justify their interest. Without a strong patent system to protect these inventions, very large international corporations, such as Microsoft, Hewlett-Packard, Cisco, Apple, Intel and others, can use their very large marketing power to steamroll over small/medium size companies and use these inventions with impunity. These corporations would rather use their superior economic and marketing power to directly compete against the small/medium business sector, without the impediments created by patents held by the small/medium business sector. **The primary factor in keeping these mega, international corporations from steamrolling over the small/medium business sector in the marketplace is the strong U.S. patent system, which is the gold standard for the world.**

The corporations that make up the anti-patent group consider patents to be an impediment to their product development and marketing schemes. These anti-patent corporations do not have an overriding, specific interest in either the U.S. economy or the economy of Colorado. These companies make money from international sales and consider the U.S. patent system to be an impediment to their global scheme. These corporations typically spend up to \$100 million a year dealing with patent infringement and other patent issues. For these reasons, they have a large stake in weakening or eliminating the U.S. patent system. Since patent infringement issues usually arises from patents held by the small/medium business sector and universities, these anti-patent corporations have a large incentive to weaken the patent system as much as possible, especially in manner that weakens the ability of small/medium businesses and universities to assert their patents. There are exceptions to the general statements made above. Texas Instruments, as well

as other large corporations, have instituted extremely good, well thought-out patent programs that are based on a strong patent system that generates licensing revenues. These companies, as well as others, respect the valid patent rights of others, and have comprehensive programs for avoiding infringement of others' patents.

Further, the proposed legislation would virtually eliminate investment in the small/medium business sector, especially the high tech sector. It is clear that the small/medium business sector currently is unable to obtain capital investment to produce a new, innovative product if patent protection for their inventions has not been obtained. For example, many investors are very interested in investing in start-up and small high tech businesses because of the potentially large rate of return on their investment. However, if the inventions on which these companies are based are not protected by a patent, the investors will take their money elsewhere and invest in the stock market, real estate, or in other countries. Elimination of strong patent protection will severely curtail investment in the small/medium business sector, especially high tech businesses.

For these reasons, it is our belief that the proposed "Patent Reform Bill" will have a substantial negative effect on the small/medium business sector in Colorado by substantially weakening a basic tool that allows the small/medium business sector to compete with the mega, internationally-based corporations, and will deter investment in new start-up technologies, which have been a significant factor in the Colorado economy.