

September 24, 2007

Dear Senators Durbin and Obama,

As employers with a large presence in the state of Illinois, we write to express our continued concern with the Patent Reform Act of 2007 (H.R. 1908/S. 1145). This legislation could come before the full Senate for consideration this fall and we appreciate your attention to this important matter.

Our companies and organizations support more than 100,000 high-wage, high-skill jobs in Illinois. A significant factor in our ability to continue to thrive and make contributions to the economy is the preservation of strong patent protections.

While we represent diverse industries, we all depend on our ability to identify new technologies and to develop new products to meet the needs of our customers. Patents provide certainty to our businesses models. That certainty that enables our companies to invest in research necessary to develop new products and the jobs required to make them.

We strongly support legislation to improve America's patent system. However, we believe that certain provisions in the current legislation—as passed by the full House and the Senate Judiciary Committee—would instead have negative consequences for our companies, our employees and our customers.

It is our collective hope that Congress will adopt improvements to the current proposals to help strengthen America's patent system, which despite its imperfections is considered the gold standard for the world. We believe that several provisions must be modified to preserve our nation's leadership in innovation. Specifically:

- We oppose the concept of using “the specific contribution over the prior art” of an invention (known as prior art subtraction) to calculate a reasonable royalty, as passed by the House and proposed by the Senate bill. This concept, new in the law, ignores the economic reality of the value due an inventor for patent infringement. We support codifying existing law on damages to calculate a reasonable royalty to assist courts in decision-making. We do not support the mandatory use of such concepts as entire market value and apportionment now found in the bills, because such language significantly departs from existing law.
- We oppose the creation of a new post-grant opposition process at the Patent and Trademark Office (PTO) that would last for the life of the patent. While the changes made to this section of the House bill represent an improvement, we still do have some significant concerns with this new process. We support the presumption of validity after a patent has been awarded and the consistent use of the clear and convincing evidence as the standard burden of proof.
- We oppose substantive rulemaking authority for the PTO in both rules and procedures as passed by the House.

We sincerely hope that these modifications can be incorporated to ensure Congress passes

legislation that strengthens both the U.S. patent system and our economy. We look forward to working with your offices as needed to provide perspective on how this important legislation will impact Illinois and we are prepared to work with Congress to achieve consensus reforms to improve our patent system.

Sincerely,

Abbott (Abbott Park)
Carbide Derivative Technology (Chicago)
Caterpillar Inc. (Peoria)
CogniTek (Northfield)
Cummins-Allison (Mt. Prospect)
Firefly Energy (Peoria)
Monsanto (Monmouth)
NanoBusiness Alliance (Skokie)
NanoInk (Skokie)
NanoIntegris (Skokie)
Nanophase (Romeoville)
Nanotope, Inc. (Skokie)
OpenCEL (Glencoe)
Polyera (Skokie)
PepsiCo, Quaker Tropicana Gatorade (Chicago)
Questek (Evanston)