

January 22, 2008

The Honorable Kay Bailey Hutchison
U.S. Senate
284 Russell Senate Office Building
Washington, DC

Dear Senator Hutchison:

As Texas employers and U.S. patent holders, we are writing to express our concerns about the Patent Reform Act (S. 1145) under consideration in the Senate. While we support efforts to update and improve our patent system, we are concerned that the legislation as reported out of the Judiciary Committee would minimize penalties for infringers, undermine the rights of patent holders, and hamper innovation.

Since the legislation was first contemplated, activities proceeding independently on multiple fronts have curtailed the rights of patent holders. A number of landmark decisions at the Supreme Court and Federal Circuit have addressed several key elements of patent reform. Recent regulations announced by the USPTO would limit the number of continuations and claims in patent cases. Certain provisions in the Committee bill would negatively compound the cumulative impact of these judicial and regulatory changes on patent holders.

Economic growth depends upon the continued strength and reliability of the U.S. patent system, which has recognized and protected the rights of inventors for more than two centuries. It is alarming that a number of diverse industries such as venture capital, biotechnology, nanotechnology, and manufacturing have registered concerns with S. 1145 that have not been addressed.

The concerns center primarily around the proposed changes to the well-established principles used to calculate damage awards and several issues related to a costly new post-grant opposition system. Further, the bill's change to patent venue rules would distort the current system in favor of defendants, creating backlogs in districts with a concentration of patent-using industries. We also support stronger reforms than currently in the bill to the judicially-created doctrine of inequitable conduct that will enhance the overall quality of patents issued by the USPTO and reduce excessive litigation costs.

The unintended consequences of S. 1145 in its current form are potentially harmful to the economy of Texas and the nation. We are hopeful that this legislation will be amended to address these and other concerns prior to floor consideration. We look forward to working with you to ensure that patent reform legislation will improve patent quality without diminishing patent rights and the strength of the U.S. patent system.

Abbott
Austin and Irving, Texas

Agennix, Inc.
Houston, Texas

Allergan
Waco, Texas

AM Biotechnologies, LLC
Galveston, Texas

Andro Diagnostics, Inc.
Galveston, Texas

AptaMed, Inc
Galveston, Texas

Asuragen
Austin, Texas

AstraZeneca

BioHouston
Houston, Texas

BioNumerik Pharmaceuticals, Inc.
San Antonio, Texas

BioTHER Corporation
Houston, Texas

Corning
Keller, Texas

Cummins-Allison
Dallas, Houston, Selma, Weslaco, Texas

Datalign, Inc.
Houston, Texas

Deaton Engineering
Georgetown, Texas

DeepNines
Dallas, Texas

Endothelix
Houston, Texas

Endovasc, Inc.
Montgomery, Texas

Ethicon, Inc.
San Angelo, Texas

Fairway Medical Technologies
Houston, Texas

Freescale Semiconductor, Inc.
Austin, Texas

INCELL, Inc.
San Antonio, Texas

International Biomedical, Ltd.
Austin, Texas

inVentiv Clinical Solutions LLC
Houston, Texas

M.D. Anderson Cancer Center
Houston, Texas

Lexicon Pharmaceuticals
The Woodlands, Texas

Merck

Miller Instruments, Inc.
Houston, Texas

Monebo Technologies, Inc.
Austin, Texas

MyPort Technologies
McKinney, Texas

Neurobiotex, Inc.
Galveston, Texas

Neuro Resource Group
Plano, Texas

Novomedics
Dickinson, Texas

NovoSci
The Woodlands, Texas

Organ Transport Systems, Inc.
Lubbock, Texas

Orthopeutics LP
Georgetown, Texas

Pensar LLC
Houston, Texas

PepsiCo

Pan American Veterinary Laboratories
Austin, Texas

PLx Phrma, Inc.
Houston, Texas

Qualcomm Inc.
Austin and Richardson, Texas

Rearden
Austin, Texas

Rules-Based Medicine, Inc.
Austin, Texas

Stem Cell Innovations/Amphioxus Cell Technologies, Inc.
Houston, Texas

Texas Healthcare and Bioscience Institute
Austin, Texas

Texas Instruments
Dallas, Texas

Texas Research Park Foundation
College Station, Texas

ThromboVision, Inc.
Houston, Texas

TrainingCampus.com
Austin, Texas

Tyrell, Inc.
Houston, Texas

Veterinary Clinical Resources
Austin, Texas

Vidacare
San Antonio, Texas

Vinson & Elkins, LLP
Austin, Texas

VisiGen Biotechnologies, Inc.
Houston, Texas