



September 4, 2007

The Honorable Howard Berman  
Chairman  
House Judiciary Subcommittee on the Courts,  
the Internet and Intellectual Property  
B352 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Howard Coble  
Ranking Member  
House Judiciary Subcommittee on the Courts,  
the Internet and Intellectual Property  
B352 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Chairman Berman and Ranking Member Coble:

We appreciate your continuing efforts to enact comprehensive patent reform legislation that rewards inventors for their innovation. With the action taken by the House Judiciary Committee at the July 18<sup>th</sup> mark-up, we believe the Patent Reform Act now includes several significant improvements that address the concerns of both high tech and life sciences innovative companies, including modifications to the post-grant review procedures. We appreciate your commitment to addressing modifications to the remaining issues of importance to early stage companies, particularly on damages apportionment but we believe these must be addressed prior to the full house moving H.R. 1908 forward.

As we have previously stated, venture backed companies need strong patents, and want to reduce litigation from nuisance suits. The Patent & Trademark Office must be equipped to respond efficiently and effectively to the pace and complexity of innovation. Small, emerging growth companies strive to commercialize innovation, often disrupting a marketplace of entrenched interests. Defending against infringement is disproportionately burdensome for small venture backed companies while the benefit of infringing relative to the cost is disproportionately attractive to large companies.

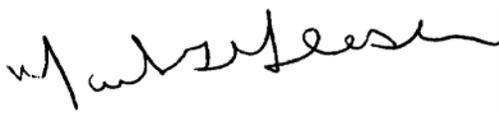
We support the changes made to the new post-grant opposition system which eliminate the open-ended opposition system that would have allowed challenges throughout the life of a patent. We have significant concerns with the present language in S. 1145 that would allow for this type of "second window". Under such a system early stage companies would not be able to rely on the validity of their intellectual property to attract capital and build their companies.

We also want to highlight several ongoing issues of concern, including damages apportionment, prior user rights and venue. These issues would need to be addressed for NVCA to support the House-Senate package. In particular, the apportionment of damages proposal, which limits damages to only the patented features, does not recognize that in a competitive environment, the market value of a product is often dependent upon the presence of a patented improvement. The damage apportionment concept is particularly troubling to medical device companies whose discrete improvements to a product may shift the sale of the entire market to the inventor of that improvement. NVCA recommends that the legislation preserve the status quo multi factor analysis, while recognizing that in some cases where the patent component has insignificant value, apportionment could apply.

The House provision on prior user rights would be a substantial change in the status quo in patent enforcement in the United States. NVCA is also concerned that the language on "substantial preparation" of commercial use could be used as a defense for large companies who have infringed an early stage company's invention.

Improving the quality of the patent system is critical to our nation's innovation leadership. NVCA will work with you and your Senate counterparts towards the goal of enacting fair and reasonable reform for all parties.

Regards,

A handwritten signature in black ink, appearing to read "Mark G. Heesen", is written over a thin red horizontal line.

Mark G. Heesen

President