

February 25, 2008

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Dear Senator Boxer:

On behalf of the more than 170 undersigned companies and organizations whose research, investment, and development efforts have generated innovative products across the California economy, creating tens of thousands of jobs in the state, we are writing to express ongoing concern regarding S. 1145, the Patent Reform Act of 2007.

As you know, California's high-tech industries lead the world in innovation across numerous sectors – biotechnology, electronics, medical technology, telecommunications, and others. The cutting edge research they do is extremely risky and expensive, and strong patent protections form the basis upon which they are able to attract the investment necessary to commercialize a new product. This is especially the case for the hundreds of smaller, venture capital-backed firms in the state, many spun out of California's world-class research universities and private research institutes.

We support balanced and reasonable efforts to improve U.S. patent law. And we appreciate that the Senate Judiciary Committee did address some issues of concern during mark-up, including deletion of expansive PTO rulemaking authority. However, we maintain that the harm to the patent system and innovation that would result from enactment of certain provisions in S. 1145 outweighs any potential benefits of other provisions of the bill.

As reported out of committee, S. 1145 would increase costs to obtain and maintain patents, undermine patent certainty, incentivize infringement, and weaken the enforceability of patent rights and intellectual property protections. Specifically:

- The measure's damages provisions will substantially weaken the value of patents and encourage infringement by making it less risky and less expensive. We oppose legislation that would limit infringement damages to a patent's "specific contribution over the prior art" or that would otherwise lead to unfair and inadequate damage awards.
- The bill's post-grant procedures would subject patents to serial administrative attacks (under a lower standard of evidence than would be required in court) by competitors throughout the entire patent life, increasing uncertainty over the patent's reliability.
- The measure also lacks stronger reforms 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 bill's new expansive (and expensive) mandatory search requirements would sharply increase costs and risk, even more so if inequitable conduct is not properly addressed.

- The legislation's venue provisions should, at a minimum, permit patent owners to sue in districts in which the claimant has its principal place of business or has engaged in substantial research, development or manufacturing activities.

We support efforts to ensure that reform of the patent system maintains and strengthens protections for innovations across *all* sectors of the economy and hope that these issues will be resolved prior to the bill being considered by the Senate. And we stand ready to work with you and other stakeholders to address these concerns.

Sincerely,

ABBIOTEC, LLC
San Diego

Abbott
Alameda, Fairfield, Redwood City, Santa
Clara, South Pasadena, Temecula

Acclarent, Inc.
Menlo Park

ActivX Biosciences, Inc.
La Jolla

Advanced Medical Optics, Inc.
Santa Ana

Advanced Sterilization Products
Irvine

Alacrity Biosciences, Inc
Laguna Hills

Allergan, Inc.
Irvine

Allievion
Dublin

Allux Medical, Inc.
Menlo Park

Amira Pharmaceuticals, Inc.
San Diego

Amylin Pharmaceuticals
San Diego

Anadys Pharmaceuticals, Inc.
San Diego

Arbor Surgical Technologies, Inc.
Portola Valley, Irvine

Ardian, Inc.
Palo Alto

Arena Pharmaceuticals
San Diego

Artecel, Inc.
Sunnyvale

ARYx Therapeutics
Fremont

Asthmatx, Inc.
Sunnyvale

Aurora Networks
Santa Clara

AviaraDx, Inc.
San Diego

Avid Biotics
South San Francisco

Axiom Medical Inc
Torrance

BayBio
South San Francisco

Bayer Healthcare
Berkeley

Beckman Coulter, Inc.
Fullerton

Bi-Level Technologies
San Diego

BioCardia, Inc.
South San Francisco

BIOCOM
San Diego

Biogen-Idec
San Diego

BioMedical Strategies LLC
San Diego

Biosense Webster, Inc.
Diamond Bar

BioVascular, Inc.
San Diego

Boston Scientific
Fremont, Mountain View, Murrieta, San
Diego, San Jose, Valencia

Cadence Pharmaceuticals, Inc.
San Diego

Calando Pharmaceuticals, Inc.
Pasadena

California Healthcare Institute
La Jolla

California Wireless, Inc.
Santa Clara

Canesta, Inc.
Sunnyvale

CardioNet
San Diego

Cell Genesys, Inc.
South San Francisco

CellPoint Diagnostics Inc.
Mountain View

Ceregene, Inc.
San Diego

Ceres, Inc.
Thousand Oaks

Conatus Pharmaceuticals Inc.
San Diego

CONNECT
San Diego

Coronis Medical Ventures
Sunnyvale

Crux Biomedical, Inc.
Menlo Park

Cryptography Research, Inc.
San Francisco

Cummins-Allison Corporation
Carlsbad

CVAC Health Systems, Inc.
Temecula

CV Therapeutics
Palo Alto

Digirad Corporation
Poway

Dolby Laboratories, Inc.
San Francisco

Edwards Lifesciences
Irvine

Elan Pharmaceuticals, Inc.
South San Francisco

Embi Tec
San Diego

Emphasys Medical, Inc.
Redwood City

Enterprise Partners Venture Capital
La Jolla

eVent Medical Inc.
Aliso Viejo

Exploramed Development, LLC
Mountain View

Exploramed NC4, Inc.
Mountain View

Exploramed III, Inc.
Mountain View

Fallbrook Engineering, Inc.
Valley Center

Fallbrook Technologies Inc.
San Diego

FivePrime Therapeutics
San Francisco

Forsight Labs
Menlo Park

Genomatica, Inc.
San Diego

Genomic Health, Inc.
Redwood City

Genomics Institute of the Novartis
Research Foundation
San Diego

Gen-Probe Incorporated
San Diego

GenVault Corporation
Carlsbad

GlaxoSmithKline
Fresno

Halozyme Therapeutics
San Diego

Immersion Corporation
San Jose

Intellikine, Inc.
La Jolla

Intermolecular, Inc.
San Jose

Invitrogen Corporation
Carlsbad

Ionian Technologies Inc.
San Diego

Irisys, Inc.
San Diego

ISTA Pharmaceuticals
Irvine

ItherX Pharmaceuticals, Inc.
San Diego

Jaden BioScience Inc.
San Diego

Jazz Pharmaceuticals, Inc.
Palo Alto

Johnson & Johnson Pharmaceutical
Research & Development, L.L.C.
La Jolla

Kinamed Inc.
Camarillo

Kosan Biosciences
Hayward

La Jolla Networks, Inc.
Solana Beach

Lauder Partners
Atherton

LifeScan, Inc.
Milpitas

Livescribe
Oakland

LSI Corporation
Milpitas, Fremont, Irvine, San Diego

Masimo Corporation
Irvine

Maxygen, Inc.
Redwood City

MEDCONX
Santa Clara

MedImmune
Mountain View

MediPhysics
Lake Forest

Mendel Biotechnology, Inc.
Hayward

Metabasis Therapeutics, Inc.
La Jolla

Metabolex
Hayward

Mi5 Networks
Sunnyvale

Mobilygen Corporation
Santa Clara

Mohr Davidow Ventures
Menlo Park

Monogram Biosciences
South San Francisco

Monsanto Company
Oxnard, Woodland

MOVA
Palo Alto

Mpex Pharmaceuticals, Inc.
San Diego

MultiGen Diagnostics, Inc.
San Diego

Nanogen, Inc.
San Diego

Nektar Therapeutics
San Carlos

NeoTract
Mountain View

NeoVista Inc.
Fremont

NeuroPace, Inc.
Mountain View

NexBio, Inc.
San Diego

Precision Human Biolaboratory Inc.
Carlsbad

Novalar
San Diego

Presidio Pharmaceuticals
San Francisco

NovaRx Corporation
San Diego

Promptu Systems Corporation
Menlo Park

Novocell, Inc.
San Diego

Proprius Pharmaceuticals, Inc.
San Diego

NovoStent Corporation
San Diego

PURE Bioscience
El Cajon

NuVasive, Inc.
San Diego

QED Bioscience Inc.
San Diego

Nuvelo, Inc.
San Carlos

QUALCOMM Inc.
San Diego

Nventa Corporation
San Diego

Rayspan Corporation
San Diego

Orexigen Therapeutics, Inc.
San Diego

Rearden
San Francisco

Pacific World Discovery LLC
San Diego

RegeneMed, Inc.
San Diego

Pegasus Biologics
Irvine

Regulus Therapeutics, LLC
Carlsbad

Pfizer, Inc.
La Jolla

Rigel Pharmaceuticals
South San Francisco

Pharmexa Inc.
San Diego

The Salk Institute for Biological Studies
La Jolla

PhiloMetron Inc.
San Diego

San Diego State University Research
Foundation Tech Transfer Office
San Diego

Ploom, Inc.
San Francisco

Satiety, Inc.
Palo Alto

Scios Inc.
Fremont

Theregen, Inc.
San Francisco

The Scripps Research Institute
La Jolla

Tracon Pharma
San Diego

Seattle Medical Technologies, Inc.
Redwood City

Tragara Pharmaceuticals, Inc
San Diego

Sequel Pharmaceuticals, Inc.
San Diego

USGI Medical, Inc.
San Clemente

SGX Pharmaceuticals, Inc.
San Diego

Verenium Corporation
San Diego

Sleep Solutions, Inc.
San Jose

Vet-Stem, Inc.
Poway

Software Partners, LLC
Encinitas

Vibrynt, Inc.
Redwood City

Somaxon Pharmaceuticals, Inc.
San Diego

Vical Incorporated
San Diego

Southern California Biomedical Council
Los Angeles

ViOptix Inc.
Fremont

Spinal Kinetics
Sunnyvale

XDx
Brisbane

Stemgent, Inc.
San Diego

XTENT, Inc.
Menlo Park

Supracor, Inc.
San Jose

Zacharon Pharmaceuticals, Inc
La Jolla

Symyx Technologies, Inc.
Santa Clara, Sunnyvale, San Ramon

Zogenix, Inc.
San Diego

Tessera Technologies, Inc.
San Jose

ZyGEM Corp. Ltd. USA
Solana Beach