

February 25, 2008

The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

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 are very appreciative of the efforts you continue to make to ensure that reform of the patent system maintains and strengthens protections for innovations across *all* sectors of the economy. We support those same goals 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

California Wireless, Inc.  
Santa Clara

BayBio  
South San Francisco

Canesta, Inc.  
Sunnyvale

Bayer Healthcare  
Berkeley

CardioNet  
San Diego

Beckman Coulter, Inc.  
Fullerton

Cell Genesys, Inc.  
South San Francisco

Bi-Level Technologies  
San Diego

CellPoint Diagnostics Inc.  
Mountain View

BioCardia, Inc.  
South San Francisco

Ceregene, Inc.  
San Diego

BIOCOM  
San Diego

Ceres, Inc.  
Thousand Oaks

Biogen-Idec  
San Diego

Conatus Pharmaceuticals Inc.  
San Diego

BioMedical Strategies LLC  
San Diego

CONNECT  
San Diego

Biosense Webster, Inc.  
Diamond Bar

Coronis Medical Ventures  
Sunnyvale

BioVascular, Inc.  
San Diego

Crux Biomedical, Inc.  
Menlo Park

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

Cryptography Research, Inc.  
San Francisco

Cadence Pharmaceuticals, Inc.  
San Diego

Cummins-Allison Corporation  
Carlsbad

Calando Pharmaceuticals, Inc.  
Pasadena

CVAC Health Systems, Inc.  
Temecula

California Healthcare Institute  
La Jolla

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

Ploom, Inc.  
San Francisco

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

Satiety, Inc.  
Palo Alto

Theregen, Inc.  
San Francisco

Scios Inc.  
Fremont

Tracon Pharma  
San Diego

The Scripps Research Institute  
La Jolla

Tragara Pharmaceuticals, Inc  
San Diego

Seattle Medical Technologies, Inc.  
Redwood City

USGI Medical, Inc.  
San Clemente

Sequel Pharmaceuticals, Inc.  
San Diego

Verenium Corporation  
San Diego

SGX Pharmaceuticals, Inc.  
San Diego

Vet-Stem, Inc.  
Poway

Sleep Solutions, Inc.  
San Jose

Vibrynt, Inc.  
Redwood City

Software Partners, LLC  
Encinitas

Vical Incorporated  
San Diego

Somaxon Pharmaceuticals, Inc.  
San Diego

ViOptix Inc.  
Fremont

Southern California Biomedical Council  
Los Angeles

XDx  
Brisbane

Spinal Kinetics  
Sunnyvale

XTENT, Inc.  
Menlo Park

Stemgent, Inc.  
San Diego

Zacharon Pharmaceuticals, Inc  
La Jolla

Supracor, Inc.  
San Jose

Zogenix, Inc.  
San Diego

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

ZyGEM Corp. Ltd. USA  
Solana Beach

Tessera Technologies, Inc.  
San Jose