

March 17, 2009

The Honorable Richard J. Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

As employers with a large presence in the state of Illinois, we write to express our strong concerns with S. 515, the Patent Reform Act of 2009. We appreciate your attention to such an important issue for our state's economy.

Our companies and organizations collectively support more than 100,000 high-wage, high-skilled 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. That certainty enables us to invest in the research necessary to develop new products and create jobs.

We continue to support and participate in efforts to craft consensus solutions that will strengthen our patent system. However, any legislative effort must be carefully considered so that it does not exacerbate the current challenges with our economy.

The recently introduced bill falls short of that necessary consensus and would negatively affect our companies, our employees and our customers.

Specifically:

- The bill would elevate apportionment as the primary factor of consideration and codify the concept of prior art subtraction as the method for calculating a reasonable royalty.

This concept 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.

- The bill would allow new open-ended challenges at the Patent and Trademark Office (PTO) that could last for the life of patent. 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 of proof.

- The bill fails to reform the judicially-created doctrine of inequitable conduct, which would enhance the overall quality of patents issued by the PTO and reduce excessive litigation costs.

We sincerely hope that we can work with you to address these concerns and achieve consensus reforms to improve our patent system.

Sincerely,

Abbott (Abbott Park)
Astellas Pharma US, Inc.
Caterpillar Inc. (Peoria)
CogniTek (Northfield)
Cummins-Allison (Mt. Prospect)
DuPont (El Paso)
Illinois Biotechnology Industry Organization (Chicago)
Illinois Tool Works (Glenview)
KeraCure, Inc. (Chicago)
Monsanto (Monmouth)
NanoBusiness Alliance (Skokie)
NanoInk (Skokie)
NanoIntegris (Skokie)
NanoSonix (Skokie)
Nerve Access, Inc. (Hickory Hills)
Ocularis Pharma, Inc. (North Riverside)
Ovation Pharmaceuticals, Inc (Deerfield)
PepsiCo, Quaker Tropicana Gatorade (Chicago)
Polyera (Skokie)
Qualcomm (Champaign-Urbana)
Questek (Evanston)
Rehabtek (Wilmette)
S&C Electric (Chicago)
Stone Medical Corporation (Moline)
Takeda Pharmaceuticals North America, Inc. (Deerfield)
Valent BioSciences Corporation (Libertyville)
World Courier, Inc. (Skokie)