

March 20, 2009

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

Dear Senator Feinstein:

On behalf of the 126 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 concern regarding recently reintroduced patent reform legislation.

As you know, California's high-tech industries lead the world in innovation across numerous sectors – biotechnology, electronics, green technology, 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 the U.S. patent system, particularly those that would improve patent quality up front by modernizing operations at and providing additional resources to the U.S. Patent and Trademark Office (PTO) and reforming legal doctrines that take unfair advantage of open and productive communications with the agency.

Unfortunately, the recently introduced Patent Reform Act of 2009 instead includes provisions that would undermine patent certainty, incentivize infringement, and weaken the enforceability of patent rights and intellectual property protections. These same provisions raised numerous concerns and objections when considered in the last Congress, and in light of the economic downturn, the consequences to research, investment, innovation and job creation that would result from their enactment makes them all the more problematic today.

Similarly, the legislation fails to account for a recent number of significant court decisions that have both transformed that patent law landscape and addressed the supposed failings of the current system in terms of excessive damages awards. In the case of the former, while the full effects are not yet known, decisions such as *Ebay v. MercExchange* (limiting the availability of injunctive relief), *Seagate* (limiting treble damages), *KSR v. Teleflex* (reinforcing the nonobviousness standard), and *Microsoft v. AT&T* (limiting offshore infringement liability) have clearly limited the legal options of patent holders in many cases. In the case of the latter, the premier example of excessive

damage awards raised in the past - the *Alcatel-Lucent v. Microsoft* decision – was overturned on the basis that the damages awarded were indeed excessive under the *existing* law, illustrating that the present system works and is not in need of whole-sale, fundamental overhaul in the shape of mandatory apportionment.

We are hopeful that your thoughtful views and perspectives, as raised during the recent Senate Judiciary Committee hearing on these very issues, will be reflected in the legislation. We appreciated your efforts and proposals during last year’s debate, echoed in your remarks and questions during the hearing, and we stand ready to work with you today to ensure that reform of the patent system maintains and strengthens protections for innovations across all sectors of the economy.

Thank you for your respectful consideration of our views and concerns.

Sincerely,  
Abbiotec, LLC  
San Diego

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

Acclarent, Inc.  
Menlo Park

Advanced Sterilization Products  
Irvine

Allergan, Inc.  
Irvine, Santa Barbara

Alure Medical, Inc.  
Carlsbad

Amira Pharmaceuticals  
San Diego

Amgen  
Thousand Oaks, San Francisco  
Fremont, Mountain View

Amylin Pharmaceuticals  
San Diego

Arena Pharmaceuticals  
San Diego

Argusina, Inc.  
San Diego

Arresto BioSciences  
Palo Alto

ARYx Therapeutics  
Fremont

Asthmatx, Inc.  
Sunnyvale

Auspex Pharmaceuticals  
Vista

Bay Area Labels  
San Jose

BayBio  
South San Francisco

Bayhill Therapeutics  
San Mateo

Beckman Coulter Inc  
Fullerton, Brea, Porterville, San Diego,  
Carlsbad

Bi-Level Technologies  
Encinitas

BioCardia, Inc.  
San Carlos

BIOCOM  
San Diego

Biogen Idec  
San Diego

BioMarin Pharmaceutical Inc.  
Novato

Biomerix Corporation  
Fremont

Biosense Webster  
Diamond Bar

Boston Scientific  
Fremont, Mountain View, San Jose,  
Valencia

Burrill & Company  
San Francisco

Cadence Pharmaceuticals  
San Diego

Calibra Medical, Inc.  
Redwood City

California Healthcare Institute  
La Jolla

CardioDx  
Palo Alto

Cell Genesys  
South San Francisco

Center for Medical Device Innovations, Inc.  
Dublin

Ceregene, Inc.  
San Diego

Conatus Pharmaceuticals  
San Diego

CONNECT  
La Jolla

Corning  
Palo Alto

Coronis Medical Ventures  
Sunnyvale

Corventis, Inc  
San Jose

Cummins-Allison Corporation  
Carlsbad

Dolby Laboratories, Inc.  
San Francisco

Edwards Lifesciences  
Irvine

EndogenX  
Los Gatos

Exelixis, Inc.  
South San Francisco

ExploraMed Development, LLC  
Mountain View

Fallbrook Engineering, Inc.  
Escondido

Fallbrook Technologies Inc.  
San Diego

ForSight Labs, LLC  
Menlo Park

ForSight VISION3, Inc.  
Menlo Park

Gen-Probe Incorporated  
San Diego

Geron Corporation  
Menlo Park

Ground Zero Pharmaceuticals, Inc.  
Irvine

Halozyme  
San Diego

Hands Mechanics Lab, Inc.  
Sacramento

ImmPORT Therapeutics Inc.  
Irvine

Intermolecular, Inc.  
San Jose

IntraPace, Inc.  
Mountain View

IRhythm  
San Francisco

ITW Space Bag  
San Diego

Jetline Engineering  
Irvine

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

Kairak  
Fullerton

LifeScan  
Milpitas

Life Technologies Corporation  
Carlsbad, Camarillo, Foster City, Pleasanton

MabVax Therapeutics, Inc.  
San Diego

Masimo Corporation  
Irvine

MedImmune  
Mountain View

Metabasis Therapeutics, Inc.  
La Jolla

Metabolex  
Hayward

Micromet, Inc.  
Encinitas

Mohr Davidow Ventures  
Menlo Park

Monsanto  
Oxnard, Woodland

Moximed  
Hayward

Nanogen  
San Diego

Nektar Therapeutics  
San Carlos

NeoTract, Inc.  
Pleasanton

Neugenesis Corporation  
Burlingame

NeuroPace, Inc.  
Mountain View

NexBio, Inc.  
San Diego

Novalar Pharmaceuticals, Inc.  
San Diego

Novare Surgical Systems  
Cupertino

Novartis  
Vacaville, Emeryville, San Carlos

NuVasive, Inc.  
San Diego

Nventa Biopharmaceuticals Corporation  
San Diego

Ocera Therapeutics, Inc.  
San Diego  
OncoMed Pharmaceuticals, Inc.  
Redwood City

OnLive, Inc.  
Palo Alto

Onyx Pharmaceuticals  
Emeryville

Optivia Biotechnology  
Menlo Park

Ovalis, Inc.  
Mountain View

Percutaneous Systems, Inc (PercSys)  
Palo Alto

Persimmon Scientific  
La Jolla

Pfizer  
La Jolla, South San Francisco

PolyRemedy, Inc.  
Mountain View

Prenatek, Inc.  
Dublin

Prosurgics Inc.  
Cupertino

Qualcomm, Inc.  
San Diego, Los Altos, San Francisco, San  
Jose, Santa Clara

Rearden LLC  
San Francisco

ResMed  
San Diego

Roche Molecular Systems, Inc.  
Pleasanton

Sangamo BioSciences, Inc.  
Richmond

Scios Inc.  
Fremont

The Scripps Research Institute  
La Jolla

Seminis Inc.  
Oxnard

Sequenom, Inc.  
San Diego

SFJ Pharmaceuticals, Inc.  
Pleasanton

Sirna Therapeutics Inc.  
San Francisco

SpinalMotion, Inc.  
Mountain View

SpineWorks Medical, Inc.  
San Jose

Stero  
Petaluma

Sutro Biopharma  
South San Francisco

Tessera  
San Jose

Tethys Bioscience, Inc.  
Emeryville

Thallo Bioscience Advisors, LLC  
San Francisco

Threshold Pharmaceuticals  
Redwood City

TRACON Pharmaceuticals  
San Diego

TriVascular2, Inc.  
Santa Rosa

USGI Medical  
San Clemente

Vibrynt, Inc.  
Redwood City

Victory Pharma  
San Diego

Viryd Technologies Inc.  
San Diego

Xencor  
Monrovia

XOMA LLC  
Berkley

Zimmer, Inc,  
Carlsbad

Zogenix, Inc.  
San Diego, Emeryville