

March 27, 2009

The Honorable Kay Bailey Hutchison
United States Senate
284 Russell Senate Office Building
Washington, DC 20510

Dear Senator Hutchison:

As employers and organizations whose research, investment, and development efforts have generated high wage jobs and innovative products throughout Texas, we are writing to express concern regarding S. 515, the Patent Reform Act of 2009.

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. Unfortunately, S. 515 includes provisions that would undermine patent certainty, incentivize infringement, and weaken the enforceability of patent rights.

We support balanced and reasonable efforts to improve the U.S. patent system and 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 facing our economy.

In short, this bill does not have consensus and would negatively affect our companies, our employees, our customers, and America's future economic growth and competitiveness. The most contentious issue remains the bill's damages provision, which would 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 its "essential features", or any other untested concept that would lead to damages awards that are not based on market realities.

The bill also has other serious problems. For example, we are very troubled by the creation of multiple new avenues to administratively challenge issued patents at the Patent and Trademark Office (PTO) without the protections available in courts of law, thus decreasing certainty about existing and future patent rights. And the bill fails to reform the judicially-created doctrine of inequitable conduct, which today chills open and productive communications between patent applicants and examiners and leads to excessive litigation costs.

We appreciate your past efforts and urge you to continue to work toward a consensus position on the legislation which would improve the patent system for all stakeholders.

Thank you for your consideration of our views and concerns.

Sincerely,

Abbott
AstraZeneca
AuricX Pharmaceuticals, Inc
BASF
BioHouston

BioNumerik
City of Abilene
Corning Incorporated
Covidien
Cummins-Allison

Cyberonics, Inc.
Deaton Engineering
DeepNines
Development Corporation of Abilene
DeWalch Technologies
Dupont
Green Harbor Medical Corporation
Illinois Tool Works Inc
Introgen Therapeutics
Johnson & Johnson
Life Technologies
Minigrip/Zip-Pak
Monebo
MyPort Technologies, Inc.
Mystic Pharmaceuticals, Inc.
Nanomaterial Systems
Neuro Resource Group, Inc.
NovoSci
OsteoMed, L.P.

Pan American Veterinary Labs
PepsiCo
Polyspec
Qualcomm
Spinal Restoration
Stretch Packaging
Tech Spray
Temple Health and Bioscience District
Terapio
Texas Instruments
Texas Research and Technology Foundation
THBI
Traulsen & Co.
Truswal Systems
Valeron Strength Films
ViaGen
Wilsonart International
Yorktown Technologies