



Statement on S. 1145 Patent Reform Act of 2007

The Innovation Alliance (IA), a coalition of high tech companies, believes that the U.S. must maintain a strong intellectual property rights regime for America to sustain its innovative leadership and domestic job growth. Accordingly, IA maintains that any changes to patent laws should be narrowly focused on improving patent quality, enhancing certainty, and preserving market-based valuations of patents.

In contrast, S.1145 contains provisions that will create uncertainty and weaken the enforceability of patents. Some of the provisions pose serious negative consequences for innovation and American jobs and technological leadership, and the bill fails to make other broadly supported reforms to reduce litigation abuse and improve patent quality.

S. 1145 is based on exaggerated claims of a crisis in the patent system. The bill fails to take into account the impact of numerous recent court decisions regarding major patent issues. Over 500 companies, universities, venture capital firms and national organizations from all 50 states have expressed strong concerns over this proposed legislation.

This legislation requires fundamental changes. Until that time, the Innovation Alliance is opposed to S.1145. Provisions that must be fixed to warrant the Innovation Alliance's support include:

- **Damages:** Existing law concerning the determination of a patent's value and calculation of damages when a patent has been infringed provides courts appropriate flexibility to reach a fair damages assessment. The current bill's damages provisions are unacceptable because they would reduce deterrents and encourage infringement. IA can support provisions that empower judges, once all evidence relevant to damages has been presented, to exercise a gatekeeper function in order to clarify which factors a jury should properly consider in calculating damages. However, we oppose any approach that is based on the undefined concept of "prior art subtraction."
- **Post-Grant Opposition:** The PTO is currently over-burdened. Rather than improve the quality of patents pre-grant, this legislation would impose additional burden on the PTO, lead to greater bureaucracy, less certainty, further delay in securing a valid patent, and expose emerging or patent-dependent companies and employers to meritless or commercially motivated challenges by deep-pocketed rivals.
- **Venue:** The venue provisions in the current bill are unacceptable. There is simply no sound policy basis for subjecting patent litigation to an entirely different, and far narrower, set of venue rules than currently apply to other forms of litigation. Moreover, any *sui generis* venue rules would invariably disfavor patent owners and emerging businesses, benefit infringers and create crippling backlog in the Federal Courts.
- **Applicant Quality Submission:** The mandatory search requirement would significantly increase the costs of obtaining patents and the risks of inequitable conduct claims, without any commensurate benefit to the patent examination process.
- **Inequitable Conduct:** The bill would codify current problems in current law regarding inequitable conduct which lead to wasteful and frivolous litigation proceedings. IA supports clarifying and heightening the standard for proving inequitable conduct.