

March 31, 2009

The Honorable Amy Klobuchar  
United States Senate  
302 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Klobuchar:

As employers and organizations whose research, investment, and development efforts have generated high wage jobs and innovative products across Minnesota, we appreciate all of your efforts to find consensus in the debate surrounding efforts to reform the U.S. patent system. As you well know, we have concerns regarding S. 515, the Patent Reform Act of 2009, and we are writing to express these.

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.

As we have discussed in the past, 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.

Additionally, 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 takes advantage of open and productive communications between patent applicants and examiners and leads to excessive litigation costs.

We thank you for your past efforts and support your desire to see the committee take the time to address outstanding concerns of stakeholders. We urge the committee to work

toward a consensus position on the legislation which would improve the patent system for all.

Thank you for your consideration of our views and concerns.

Sincerely,

Acorn Cardiovascular, Inc.

ATS Medical

BASF

BGK Finishing Systems

Boston Scientific

Cargill

CVRx, Inc.

EcoLab

Electromed, Inc.

Heartland

Illinois Tool Works Inc

Interrad Medical, Inc.

MEDRAD

Monsanto

PepsiCo

Zimmer