

April 1, 2008

The Honorable Ron Wyden
230 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Gordon Smith
404 Russell Senate Office Building
Washington, DC 20510

Dear Senators Wyden and Smith:

On behalf of the undersigned employers, companies and organizations whose investment, research, and development efforts are driving economic growth in Oregon, we are writing to express ongoing concern regarding S. 1145, the Patent Reform Act of 2007.

As recently noted in the Salem Statesman Journal (2/29/08), Oregon is one of the top five most innovative states in the United States. According to an annual report by the United States Patent and Trademark Office (USPTO), detailing the geographic distribution of patents, Oregon received 6.5 patents for every 10,000 inhabitants in the 2007 fiscal year, which is more than double the U.S. average of 3.1. Strong patent protection is an essential part of translating Oregon's innovation into growth.

We support balanced and reasonable efforts to improve U.S. patent law. And we appreciate that the Senate Judiciary Committee did address some issues of concern during mark-up, including deletion of expansive PTO rulemaking authority. However, we maintain that the harm to the patent system and innovation that would result from enactment of certain provisions in S. 1145 outweighs any potential benefits of other provisions of the bill.

As reported out of committee, S. 1145 would increase costs to obtain and maintain patents, undermine patent certainty, incentivize infringement, and weaken the enforceability of patent rights and intellectual property protections. Specifically:

- The measure's damages provisions will 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 that would otherwise lead to unfair and inadequate damage awards.
- The bill's post-grant procedures would subject patents to serial administrative attacks (under a lower standard of evidence than would be required in court) by competitors throughout the entire patent life, increasing uncertainty over the patent's reliability.

- The measure also lacks stronger reforms to the judicially-created doctrine of inequitable conduct that will enhance the overall quality of patents issued by the USPTO and reduce excessive litigation costs.
- The bill's new expansive (and expensive) mandatory search requirements would sharply increase costs and risk, even more so if inequitable conduct is not properly addressed.
- The legislation's venue provisions should, at a minimum, permit patent owners to sue in districts in which the claimant has its principal place of business or has engaged in substantial research, development or manufacturing activities.

We are very appreciative of the efforts you continue to make to ensure that reform of the patent system maintains and strengthens protections for innovations across all sectors of the economy. We support those same goals and hope that these issues will be resolved prior to the bill being considered by the Senate. And we stand ready to work with you and other stakeholders to address these concerns.

Sincerely,

Precision Wire Components
Tualatin

Ames Technology
Beaverton

Oregon Bioscience Association
Portland

MitoSciences Inc.
Eugene

NeuroCom International, Inc.
Clackamas

Cummins-Allison Corporation
Portland

Invitrogen Corp.
Eugene

Qualcomm, Inc.
Portland

Vesticon
Portland

GlaxoSmithKline
Distributed employees

Blacktoe Medical Inc.
Portland

Floragenex
Eugene

Western Shelter Systems
Eugene

Oregon Translational Research and Drug Development Institute
Portland

LightSmyth Technologies, Inc.
Eugene

Moonshadow Technologies, Corp.
Eugene

Inovise Medical, Inc.
Portland

Extreme Technologies, Inc. dba BowTech
Eugene

PepsiCo
Beaverton, Portland and Salem