



Wisconsin Technology Council

February 6, 2008

The Honorable Herb Kohl
330 Hart Senate Office Building
Washington, D.C. 20510-4903

The Honorable Russ Feingold
506 Hart Senate Office Building
Washington, DC 20510-4904

Dear Senators Feingold and Kohl:

The undersigned organizations and entities represent more than 160 innovative companies, individuals and non-profit organizations in diverse industries and endeavors in the State of Wisconsin. Collectively, we contribute to the economic welfare of the state (through job creation and product manufacturing), technological progress (through innovative activities), and educational success (through research and development). With the assistance of the non-profit and non-partisan Wisconsin Technology Council and the Wisconsin Biotechnology and Medical Device Association, we are writing to express our concerns about patent law reform.

At the outset, we would like to thank you and your excellent staffs for invaluable assistance in improving the Patent Reform Act of 2007 (S. 1145). From a public policy perspective, the bill favorably reported by the Senate Committee on the Judiciary is much better than the bill as introduced. Your amendments made significant improvements in a number of provisions, including: a one-year grace period and an inventor's oath, removal of prior user rights, and venue provisions. The bill is improved but there are still significant issues to be addressed before it should become law.

While we support efforts to update and improve our patent system, we are concerned that the legislation approved by the Committee would minimize penalties for infringers, undermine the rights of patent holders, and hamper innovation. Permit us to highlight three concrete concerns.

First, a major issue for our Wisconsin economy is the provision for a "second window" and a "third window" in post-grant opposition proceedings. There are more than 60 start-up companies in Dane County and many others statewide that are attributable to technology transfer from the UW-Madison or other institutions to the private sector. An environment that favors transfer is dependent on strong patents. The second and third windows will make all patents susceptible to frivolous patent challenges throughout the life of the patent, and therefore will chill successful technology transfer.

Second, additional concerns center primarily on the proposed changes to the well-established principles used to calculate monetary damage awards and the lack of reform to the inequitable conduct defense. The apportionment of damages provisions in



Wisconsin Technology Council

S. 1145 would serve to give infringers a windfall to the detriment of those who have negotiated for licenses at market rates. Such windfalls could discourage venture capital investments in start-up companies. The failure to reform inequitable conduct is especially problematic in light of the newly-mandated search report and analysis (“applicant quality submissions”). This mandate will add 30 percent to the cost of applying for a patent and do little to improve patent quality.

Third, although institutions of higher education and non-profit patent licensing organizations are excepted, the bill’s change to patent venue would distort the current system to favor defendants, creating backlogs in districts with a concentration of patent-using industries. We fail to understand why out-of-state infringers should be favored over Wisconsin companies.

Since the legislation was first contemplated, a number of landmark decisions by the U.S. Supreme Court and U.S. Court of Appeals for the Federal Circuit have addressed several key elements of patent reform. Recent regulations promulgated by the USPTO would limit the number of continuations and claims in patent applications. The cumulative impact of these changes, which serve to curtail the rights of patent holders, would be compounded by certain provisions in S. 1145.

Economic growth depends upon the continued strength and reliability of the U.S. patent system, which has recognized and protected the rights of inventors for more than two centuries. On the national stage, a number of diverse groups have registered concerns with S. 1145 -- venture capital, biotechnology, nanotechnology, universities, manufacturers and individual inventors, to name a few. It would be alarming if their views were not considered and accommodated.

Most importantly, from our perspective, the consequences of S. 1145 in its current form will be harmful to the economy of Wisconsin and the nation. We are hopeful that S. 1145 will be amended to address our concerns prior to floor consideration. We look forward to working with you to ensure that patent reform legislation will improve patent quality without diminishing patent rights and the strength of the U.S. patent system, and will not hurt the citizenry of the State of Wisconsin.

Respectfully yours,

Abbott Laboratories
Accuform Technologies, LLC
Ad-Tech Medical Instrument Corp.
Agtech Products, Inc.
AhR Pharmaceuticals, Inc.
Alfalight, Inc.
Alpha Universe, LLC



Wisconsin Technology Council

American Bioanalytical, Inc.
Amgen
aOva Technologies, Inc.
Automated Notification Systems, Inc.
BBI Research, Inc.
BellBrook Labs LLC
BioForm Medical, Inc.
Biopons, Inc.
BioSentinel, LLC
BioSystem Development, LLC
BIT 7/ Technicor Division
Bio-Technical Resources
Blood Center of Wisconsin
Caden Biosciences, Inc.
Cambridge Major Laboratories, Inc.
Cardiac Science Corporation
Cell Line Genetics LLC
Collectar Inc.
Cellular Dynamics International, Inc.
Centrose LLC
ChemALong Laboratories, LLC
Class Biologically Clean, Ltd.
Clonex Development, Inc.
Columbus Chemical Industries, Inc.
Concept Equity Group
ConjuGon, Inc.
CRS Medical Diagnostics Inc.
Cytometix
Cytophil, Inc.
DNASTAR, Inc.
EMD Chemicals-Novagen Brand
Earth Tech Consulting, Inc.
Echometrix LLC
Eli Lilly and Company
eMetagen Corporation
Enthermics Medical Systems
EPICENTRE Biotechnologies
EraGen Biosciences Inc.
Esotech Innovations Inc.
Fiberstar, Inc.
Flanagan Financial
FluGen Inc.
FOTODYNE Incorporated
Functional Biosciences, Inc.
Future Machine Inc.
GTI, Inc.



Wisconsin Technology Council

GWC Technologies, Inc.
Gala Biotech
Genencor International
GeneTel Laboratories, LLC
Genesis Industries Incorporated
Geneva Laboratories, Inc.
GenTel Biosciences, Inc.
Genzyme Corporation
GeriGene Medical Corporation
Gilson Incorporated
Global GeneTechs, LLC
Harlan Bioproducts for Science
Helix Diagnostics LLC
Imago Scientific Instruments Corp.
Integrity Biologics, Inc.
Invivosciences LLC
Invitrogen Corporation
Invivosciences LLC
ioGenetics LLC
Kelp, Inc.
Kendrick Laboratories, Inc.
Konect Marketing
Lake Resources Group
LIFE Corporation
Lucigen Corporation
MPACS, LLC
MRPC
Marvel Medtech, LLC
Medigen Biosciences
Medtronic, Inc.
Mentor Biologics
Milk Smart
Mirus Bio Corporation
Mithridion, Inc.
Molecular Chimerics Corporation
Molecular Specialties
George Mosher, angel investor
nPoint
NeoClone Biotechnology International LLC
Nerites Corporation
Networked Insights, Inc.
Neuroagnostics, Inc.
Next Generation Clinical Research
NorthStar Economics
Nubacom
Nucleic Resources, LLC



Wisconsin Technology Council

Nutra-Park, Inc.
OpGen, Inc.
PPD
Percitus Biosciences, LLC
Phillips Plastics
PhysioGenix Inc.
Platypus Technologies, LLC
POINTONE Systems
Praxair
Prevention Genetics LLC
Primorigen Biosciences, LLC
Prism Clinical Imaging
ProCertus BioPharm, Inc.
Prodesse, Inc.
Protocol Link, Inc.
Quincy Bioscience
Quintessence Biosciences, Inc.
RF Technologies
Renovar, Inc.
Roche NimbleGen
RxoA Biosciences LLC
SAFC, Inc.
Scarab Genomics LLC
Scientific Protein Laboratories LLC
SciLog, Inc.
Semba Biosciences, Inc.
Silatronix, Inc.
Sino-American Biomedical Services, LLC
Soft Flow, Inc.
Standard Imaging, Inc.
Stemina Biomarker Discovery
Stratatech Corporation
Susan E. Atkins + Associates
SysLogic Inc.
Takara Bio USA
Tera Medica Healthcare Technology
Thermo Fisher Scientific
TomoTherapy, Inc.
TRAC Microbiology, Inc.
United Vaccines, Inc.
Vantus Technology Corporation
Venture Investors LLC
ViaGen, Inc.
Virent Energy Systems Inc.
WICAB, Inc.



Wisconsin Technology Council

Waisman Clinical BioManufacturing Facility
Wisconsin Viral Research Group
ZyStor Therapeutics, Inc.

(The following six start-up companies, also listed above, are based upon technologies from the Medical College of Wisconsin)

Cytometix
Prism Clinical Imaging
Neurognostics, Inc.
Invivosciences, LLC
Molecular Specialties
Zystor Therapeutics, Inc.

University of Wisconsin institutions:

UW - Madison
UW - System
UW - Green Bay
UW - Eau Claire
UW - Platteville
UW - River Falls
UW - Superior
UW - Oshkosh
UW - Whitewater
UW - Parkside

Other institutions and organizations:

Marshfield Clinic
Medical College of Wisconsin
WiSys Technology Foundation
Wisconsin Biotechnology and Medical Device Association
Wisconsin Alumni Research Foundation (WARF)
University Research Park

cc: Bob Schiff
Jeff Miller