

March 20, 2009

The Honorable Dianne Feinstein
United State Senate
331 Hart Office Building
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the 126 undersigned companies and organizations whose research, investment, and development efforts have generated innovative products across the California economy, creating tens of thousands of jobs in the state, we are writing to express concern regarding recently re-introduced patent reform legislation.

As you know, California's high-tech industries lead the world in innovation across numerous sectors – biotechnology, electronics, green technology, medical technology, telecommunications, and others. The cutting edge research they do is extremely risky and expensive, and strong patent protections form the basis upon which they are able to attract the investment necessary to commercialize a new product. This is especially the case for the hundreds of smaller, venture capital-backed firms in the state, many spun out of California's world-class research universities and private research institutes.

We support balanced and reasonable efforts to improve the U.S. patent system, particularly those that would improve patent quality up front by modernizing operations at and providing additional resources to the U.S. Patent and Trademark Office (PTO) and reforming legal doctrines that take unfair advantage of open and productive communications with the agency. Unfortunately, the recently introduced Patent Reform Act of 2009 instead includes provisions that would undermine patent certainty, incentivize infringement, and weaken the enforceability of patent rights and intellectual property protections. These same provisions raised numerous concerns and objections when considered in the last Congress, and in light of the economic downturn, the consequences to research, investment, innovation and job creation that would result from their enactment makes them all the more problematic today.

Similarly, the legislation fails to account for a recent number of significant court decisions that have both transformed that patent law landscape and addressed the supposed failings of the current system in terms of excessive damages awards. In the case of the former, while the full effects are not yet known, decisions such as *Ebay v. MercExchange* (limiting the availability of injunctive relief), *Seagate* (limiting treble damages), *KSR v. Teleflex* (reinforcing the non-obviousness standard), and *Microsoft v. AT&T* (limiting offshore infringement liability) have clearly limited the legal options of patent holders in many cases. In the case of the latter, the premier example of excessive damage awards raised in the past - the *Alcatel-Lucent v. Microsoft* decision – was overturned on the basis that the damages awarded were indeed excessive under the *existing* law, illustrating that the present system works and is not in need of whole-sale, fundamental overhaul in the shape of mandatory apportionment.

We are hopeful that your thoughtful views and perspectives, as raised during the recent Senate Judiciary Committee hearing on these very issues, will be reflected in the legislation. We appreciated your efforts and proposals during last year's debate, echoed in your remarks and questions during the hearing, and we stand ready to work with you today to ensure that reform of the patent system maintains and strengthens protections for innovations across all sectors of the economy.

Thank you for your respectful consideration of our views and concerns.

Sincerely,

Abbottec, LLC
San Diego

Arresto BioSciences
Palo Alto

Abbott
Alameda, Fairfield, Redwood City, Santa
Clara, South Pasadena, Temecula

ARYx Therapeutics
Fremont

Acclarent, Inc.
Menlo Park

Asthmatx, Inc.
Sunnyvale

Advanced Sterilization Products
Irvine

Auspex Pharmaceuticals
Vista

Allergan, Inc.
Irvine, Santa Barbara

Bay Area Labels
San Jose

Alure Medical, Inc.
Carlsbad

BayBio
South San Francisco

Amira Pharmaceuticals
San Diego

Bayhill Therapeutics
San Mateo

Amgen
Thousand Oaks, San Francisco
Fremont, Mountain View

Beckman Coulter Inc
Fullerton, Brea, Porterville, San Diego,
Carlsbad

Amylin Pharmaceuticals
San Diego

Bi-Level Technologies
Encinitas

Arena Pharmaceuticals
San Diego

BioCardia, Inc.
San Carlos

Argusina, Inc.
San Diego

BIOCOM
San Diego

Biogen Idec
San Diego

BioMarin Pharmaceutical Inc.
Novato

Biomerix Corporation
Fremont

Biosense Webster
Diamond Bar

Boston Scientific
Fremont, Mountain View, San Jose,
Valencia

Burrill & Company
San Francisco

Cadence Pharmaceuticals
San Diego

Calibra Medical, Inc.
Redwood City

California Healthcare Institute
La Jolla

CardioDx
Palo Alto

Cell Genesys
South San Francisco

Center for Medical Device Innovations, Inc.
Dublin

Ceregene, Inc.
San Diego

Conatus Pharmaceuticals
San Diego

CONNECT
La Jolla

Corning
Palo Alto

Coronis Medical Ventures
Sunnyvale

Corventis, Inc
San Jose

Cummins-Allison Corporation
Carlsbad

Dolby Laboratories, Inc.
San Francisco

Edwards Lifesciences
Irvine

EndogenX
Los Gatos

Exelixis, Inc.
South San Francisco

ExploraMed Development, LLC
Mountain View

Fallbrook Engineering, Inc.
Escondido

Fallbrook Technologies Inc.
San Diego

ForSight Labs, LLC
Menlo Park

ForSight VISION3, Inc.
Menlo Park

Gen-Probe Incorporated
San Diego

Geron Corporation
Menlo Park

Ground Zero Pharmaceuticals, Inc.
Irvine

Halozyme
San Diego

Hands Mechanics Lab, Inc.
Sacramento

ImmPORT Therapeutics Inc.
Irvine

Intermolecular, Inc.
San Jose

IntraPace, Inc.
Mountain View

IRhythm
San Francisco

ITW Space Bag
San Diego

Jetline Engineering
Irvine

Johnson & Johnson Pharmaceutical
Research and Development, L.L.C.
La Jolla

Kairak
Fullerton

LifeScan
Milpitas

Life Technologies Corporation
Carlsbad, Camarillo, Foster City, Pleasanton

MabVax Therapeutics, Inc.
San Diego

Masimo Corporation
Irvine

MedImmune
Mountain View

Metabasis Therapeutics, Inc.
La Jolla

Metabolex
Hayward

Micromet, Inc.
Encinitas

Mohr Davidow Ventures
Menlo Park

Monsanto
Oxnard, Woodland

Moximed
Hayward

Nanogen
San Diego

Nektar Therapeutics
San Carlos

NeoTract, Inc.
Pleasanton

Neugenesis Corporation
Burlingame

NeuroPace, Inc.
Mountain View

NexBio, Inc.
San Diego

Novalar Pharmaceuticals, Inc.
San Diego

Novare Surgical Systems
Cupertino

Novartis
Vacaville, Emeryville, San Carlos

NuVasive, Inc.
San Diego

Nventa Biopharmaceuticals Corporation
San Diego

Ocera Therapeutics, Inc.
San Diego

OncoMed Pharmaceuticals, Inc.
Redwood City

OnLive, Inc.
Palo Alto

Onyx Pharmaceuticals
Emeryville

Optivia Biotechnology
Menlo Park

Ovalis, Inc.
Mountain View

Percutaneous Systems, Inc (PercSys)
Palo Alto

Persimmon Scientific
La Jolla

Pfizer
La Jolla, South San Francisco

PolyRemedy, Inc.
Mountain View

Prenatek, Inc.
Dublin

Prosurgics Inc.
Cupertino

Qualcomm, Inc.
San Diego, Los Altos, San Francisco, San
Jose, Santa Clara

Rearden LLC
San Francisco

ResMed
San Diego

Roche Molecular Systems, Inc.
Pleasanton

Sangamo BioSciences, Inc.
Richmond

Scios Inc.
Fremont

The Scripps Research Institute
La Jolla

Seminis Inc.
Oxnard

Sequenom, Inc.
San Diego

SFJ Pharmaceuticals, Inc.
Pleasanton

Sirna Therapeutics Inc.
San Francisco

SpinalMotion, Inc.
Mountain View

SpineWorks Medical, Inc.
San Jose

Stero
Petaluma

Sutro Biopharma
South San Francisco

Tessera
San Jose

Tethys Bioscience, Inc.
Emeryville

Thallo Bioscience Advisors, LLC
San Francisco

Threshold Pharmaceuticals
Redwood City

TRACON Pharmaceuticals
San Diego

TriVascular2, Inc.
Santa Rosa

USGI Medical
San Clemente

Vibrynt, Inc.
Redwood City

Victory Pharma
San Diego

Viryd Technologies Inc.
San Diego

Xencor
Monrovia

XOMA LLC
Berkley

Zimmer, Inc,
Carlsbad

Zogenix, Inc.
San Diego, Emeryville