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Computer & Communications Industry Association

July 10, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United State Senate
Washington, D.C. 20510

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Howard L. Berman
Chairman
Subcommittee on Courts, the Internet and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Howard Coble
Ranking Member
Subcommittee on Courts, the Internet and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Patent Reform Act of 2007 (H.R. 1908, S. 1145)

Dear Chairman Leahy, Chairman Conyers, Chairman Berman, Senator Specter, Representative Smith and Representative Coble:

The Computer & Communications Industry Association (CCIA) wishes to express our thanks for your leadership and commitment in seeking comprehensive reform for our patent system.

CCIA members are at the forefront of technological innovation and include information and communications technology companies of all sizes. Together our members employ almost one million workers and generate nearly $250 billion in annual revenue. Passage of the Patent Reform Act of 2007 is essential in order to maintain our industry's competitive edge and spur economic growth, investment, and job creation.

Today, all sectors of the U.S. economy increasingly rely on IT for basic business processes and for conducting R&D. As innovative creators of IT products and services, our members seek and own patents, but, as is characteristic of complex technologies, also license the technologies of others. As both creators and users, our members experience all sides of patent disputes. We believe that the balance, fairness, and efficiency that this legislation is designed to restore is in the public interest and will prove beneficial to all legitimate stakeholder interests as well.

We face a patent system that has been radically expanded in recent years, as the patent-specialized U.S. Court of Appeals for the Federal Circuit has made patents easy to get, easy to assert, more potent, and available for subject matter never contemplated by Congress. This expansion has created imbalances favoring some but harming others, and of course those who benefit naturally resist reform. However, the rest of the world increasingly sees the U.S. patent system as a playground for lawyers and opportunists.

The Patent Reform Act proposes to check the proliferation of questionable and low-quality patents, and the ease with which such patents can be exploited by threats and litigation. We applaud its provisions for post-grant review, which will improve patent quality and provide a cost-effective alternative to litigation. Countless dubious IT patents are already on the books, and the Patent and Trademark Office (PTO) issues thousands more every month. Because innovators cannot feasibly evaluate the quality, business intent, and applicability of every patent issued, the post-grant review provisions create an efficient, timely procedure for verifying the legitimacy of patents if and when they become sufficiently relevant to justify the expense.

We wholeheartedly support the bill's provision on apportionment of damages, which sets up a common sense framework for giving the inventor what he or she is entitled to, not more nor less. Users have come to expect and rely on richly functional products containing many thousands of possibly patentable functions, as well as programming, design, integration, testing, and marketing – all of which contribute to the value of the product and the need for investment. Too often the current law's unstructured smorgasbord of 15 possible factors[1] result in damages that are wildly disproportionate to the relative economic contribution of the patent.

If any complaint may be made about the Patent Reform Act, it is that it does not go far enough, fast enough. The need for a long-term reassessment and reengineering of patent practice and institutions is explained in CCIA's recent study, *Patent Reform for a Digital Economy.*[2] The Act's modest reforms reflect the realities of compromise, but they can and should be effective upon enactment – rather than deferred for patents issued 12 months from now.

We urge rapid action on the Patent Reform Act of 2007. With your steadfast leadership and support, we hope the passage of the Patent Reform Act will make an immense contribution to America's competitiveness in a global economy and will reaffirm this nation's commitment to innovation and economic growth. We look forward to working with you to ensure that this comprehensive legislation is enacted.

Sincerely,

Edward J. Black
President & CEO
Computer & Communications Industry Association

Cc: Members of the United States Senate
Members of the United States House of Representatives

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[1] *Georgia-Pacific Corp.* v. *United States Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970).
[2] *Available at* http://www.ccianet.org/docs/patent/CCIA_WP_PatReformDigEcon.pdf