

December 2, 2013

Speaker John A. Boehner
H-232 The Capitol
Washington, DC 20515

Minority Leader Nancy Pelosi
H-204 The Capitol
Washington, DC 20515

Dear Mr. Speaker and Leader Pelosi:

Representing a broad cross-section of the California innovation ecosystem, we write to express our serious concerns that H.R. 3309—the Innovation Act—fails to strengthen the U.S. patent system for innovators, entrepreneurs and investors and will make it more complex and difficult for patent holders to utilize their intellectual property for the benefit of job creation, technology development and the public good. We respectfully request that you postpone the upcoming vote on H.R. 3309 until Congress has had adequate time to fully consider more input from stakeholders to ensure the legislation does not inadvertently harm the world's greatest innovation system.

We represent California innovators from startups and emerging companies to large, multi-national organizations in a wide array of technology sectors including biotechnology, clean energy, pharmaceutical, defense technology, medical device, medical diagnostics, cybersecurity, wireless health, action/sports, software and communication, and their research and commercialization partners including universities, private research institutions, venture capital firms, and angel networks. America's strong patent system allows our diverse membership the flexibility to innovate, create and thrive in various ways and with assorted business models and revenue streams. This diversity and flexibility in America's innovation ecosystem was recognized by the House, Senate and Administration as the America Invents Act weaved its way to a consensus agreement after several years of study, debate and compromise. H.R. 3309's failure to replicate such a deliberative process results in numerous problematic provisions that undermine, not strengthen, intellectual property rights.

While H.R. 3309's well-intentioned goal is to curb abusive patent litigation, we are seriously concerned that it will lead to unintended consequences for all patent holders. Indeed, the bill fails to specifically address egregious behaviors and, instead, establishes more rigorous requirements and greater penalties on all patent holders. Examples of such limitations include more costly pleading and reporting requirements, restrictions on additional discovery requests, burdensome fee shifting provisions, and narrowing of the post-grant review estoppel. Our members rely heavily on intellectual property to recoup their investments in research and development. For many startups, their patent portfolio is their most valuable commodity – and in some cases their only one. H.R.3309 will limit our companies' ability to assert their patent rights and increase litigation risks, which will in turn lower the value of patent assets and reduce investment in early innovation.

Another major concern is H.R. 3309's complete failure to rectify the U.S. Patent and Trademark Office's continued funding inequity. USPTO is funded completely by user fees paid by those of us in the innovation community, yet those fees continue to be siphoned away from the USPTO—further damaging USPTO's ability to properly implement the AIA, improve patent quality, and solve problems H.R. 3309 purports to address. Over the last 20 years, approximately \$1 billion in fees paid by patent applicants has been diverted from its proper use at the USPTO. This unwarranted diversion of fees has resulted in more than 600,000 unexamined patent applications and more than 31 months in the average patent pendency time –

the wait time from a patent application’s filing until final action on the application by the USPTO. To maintain America’s competitive edge internationally, reducing patent pendency is absolutely vital, and we urge you to include a provision to rectify the issue in the final version of H.R. 3309.

Additionally, H.R. 3309 doesn’t solve one of the main problems with abusive patent litigation—frivolous and vague patent infringement demand letters—which are seriously weakening intellectual property rights. Demand letters are central to the patent troll problem – many claims begin and end with these letters as companies quickly pay undeserved “licensing fees,” given the expense and complication of defending on the merits in court. We urge Congress to seek more input from stakeholders on how to best enact meaningful legislative solutions in H.R. 3309 to protect businesses of all sizes and to rein in bad actors that target innovators.

Given the concerns described above, we cannot support the legislation in its current form. We respectfully ask that you postpone Floor action on H.R. 3309 until and unless the issues are adequately addressed. We appreciate your consideration of our views.

