

COALITION FOR PATENT FAIRNESS

July 26, 2006

The Honorable Lamar S. Smith
Chairman
Subcommittee on Courts, the Internet, and Intellectual Property
Committee on the Judiciary
United States House of Representatives

The Honorable Howard L. Berman
Ranking Member
Subcommittee on Courts, the Internet, and Intellectual Property
Committee on the Judiciary
United States House of Representatives

Dear Chairman Smith and Representative Berman:

Innovation is at the heart of America's economy. Our nation leads the world in cutting-edge technology but our patent system has not kept pace. Innovation is slowed as U.S. companies struggle against a wave of questionable patents and associated litigation that threaten the fairness and integrity of our intellectual property system. The Coalition for Patent Fairness was created to address these problems by working with Congress in a positive, proactive way to achieve lasting, fair and balanced reforms that will strengthen our patent system and maximize American innovation.

Like two sides of a coin, the problems with the current patent system – poor patent quality and abusive patent litigation – are interconnected and must be addressed together. Questionable patents force companies to divert valuable resources that might otherwise go toward research and development. This in turn imposes an “innovation tax” that increases costs to consumers. Dedicated patent examiners work hard to do the best work possible under difficult circumstances. Outmoded procedures, insufficient training, and lack of resources result in a substantial number of problem patents issued each year. Improving patent quality and making changes at the Patent Office are important efforts, but on their own aren't enough to fix the broken patent litigation system.

While we struggle with the patent quality issue, abusive patent litigation is sky-rocketing. Patent speculators are able to take advantage of imbalances in the law to leverage high settlements. The patent litigation rules function less and less as a neutral system for resolving disputes, and instead encourage winner-take-all, jackpot-like strategies. The Supreme Court, in its recently rendered unanimous decision in eBay, has taken a substantial “first step” toward returning balance to the litigation system. But there is much more that Congress should do.

The Coalition for Patent Fairness is a growing group of companies and trade associations committed to common-sense reforms to the patent system and patent litigation. We believe that the practice of “forum shopping” should be ended, ensuring patent lawsuits are resolved in courts that have a reasonable connection to the underlying claim.

Damages should be based on common sense standards. In a world where a device can be made up of thousands of patented components, patent infringement damages should be proportionate to the value of the component in question rather than the entire product. At the same time, the standard for assessing “willful infringement” – which triggers a tripling of ordinary damages – must ensure “willful” damages are only assessed where there is truly egregious conduct.

Finally, to encourage companies to keep their R&D programs in the U.S., we believe that patent laws should be revised to ensure that companies are not held liable in U.S. courts for worldwide damages from acts of infringement that are claimed to have occurred in other countries.

The undersigned members of the Coalition for Patent Fairness greatly appreciate your ongoing leadership towards reform in areas so important to the future of innovation in America. We are looking forward to working with you to restore a balance to the patent system in order stop abuses which are hurting consumers, businesses, and small and large users of our patent system alike.

- **Adobe**
- **Apple**
- **Applied Materials**
- **Aruba Wireless Networks, Inc.**
- **Autodesk**
- **Avaya**
- **Business Software Alliance**
- **CA, Inc.**
- **Charter Communications**
- **Chevron Corporation**
- **Ciena Corporation**
- **Cisco Systems**
- **Comcast**
- **Computer and Communications Industry Association**
- **Computing Technology Industry Association**
- **Countrywide Home Loans**
- **Dell**
- **eBay**
- **Electrolux**
- **Financial Services Roundtable**
- **Fortune Brands**
- **Hewlett-Packard**
- **Information Technology Association of America**
- **Information Technology Industry Council (ITI)**
- **Intel**
- **Intuit**
- **Juniper Networks**
- **Lexmark International**
- **MasterCard**
- **Micron Technology**
- **Microsoft**
- **NCR Corporation**
- **Nielsen Media Research, Inc.**
- **Oracle**
- **Palm**
- **Red Hat**
- **Research In Motion**
- **SAP**
- **Securities Industry Association**
- **Software and Information Industry Association**
- **Symantec**
- **TechNet**
- **Time Warner**
- **Visa**
- **Xilinx, Inc.**