

Testimony of Mary E. Doyle

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before the

Senate Committee on the Judiciary

regarding

“Patent Reform: The Future of American Innovation”

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Chairman Leahy, Senator Specter and Members of the Committee, my name is Mary Doyle and I am Senior Vice-President and General Counsel of Palm, Inc., headquartered in Sunnyvale, California. I thank the Committee for the opportunity to testify on behalf of Palm and as a member of the Coalition for Patent Fairness in support of the "Patent Reform Act of 2007." We believe this legislation will greatly enhance the ability of Palm and other companies like ours to innovate and to compete globally.

It has been nearly ten years since Congress passed the Intellectual Property and Communications Omnibus Reform Act of 1999. That act addressed inequities in the United States patent system by implementing several reforms, among them, mandatory publication of patent applications after eighteen months and increased third party participation in reexamination proceedings. The only other significant patent reform effort in recent decades resulted in the passage of the Hatch-Waxman Act of 1984, subsequently amended, which addressed issues of concern to the pharmaceutical industry. Despite revolutionary developments in technology and the emergence of global markets, however, the patent statutes have otherwise remained largely untouched since 1952 – and the patent damages statute since 1946.

Palm and many others believe it is time to take stock of the U.S. patent system once again, and to ensure that it is working in a fair and balanced way for American innovators across all industries. In our view, the provisions of S.1145 accomplish that goal. We commend Chairman Leahy, Senator Hatch and other sponsoring Members of this Committee for developing legislation over the past two Congresses that seeks to reconcile

the interests of all stakeholders in the U.S. patent system to reach a fair and balanced result.

Mr. Chairman, as you requested I will address the issues you have indicated will be a focus of this hearing, but I also would like to share our views on two additional issues – apportionment of damages and limitation of willful infringement claims – both of which Palm and the Coalition for Patent Fairness (Coalition) believe will be essential to any successful effort at patent reform.

Palm and the Coalition support interlocutory appeal to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) from Markman rulings, and the revision of venue laws to discourage forum shopping, both provided for in S.1145. We also believe the proposed post-grant review procedures are a fair and reasoned response to ongoing problems in the patent system and the historical underinvestment in the work of the U.S. Patent and Trademark Office (PTO). In addition, we strongly support Chairman Leahy’s and Senator Hatch’s effort to provide guidance to the courts regarding the measure of damages for infringement and to establish a more rigorous legal standard for imposition of triple damages upon a finding of willful infringement.

Before delving into these issues in greater detail, I thought it might be useful to the Committee for me to share something of Palm’s everyday experience with the patent system. I hope this brief snapshot will provide the Committee a greater understanding of why Palm and a myriad of other interested parties – ranging from financial services firms

to energy companies to family farmers – are urgently seeking these reforms of the patent law and process.

### **Palm's Experience**

As the head of the legal department for a mobile computing company, I have seen first hand the challenges that have developed under our patent system, and how abuses have exploded. It now takes as long as four years for a patent to issue on an application reflecting today's innovations. The continued backlog of patent applications at the PTO speaks clearly to the need for a renewed commitment of resources to the system we rely on every day to protect our competitive advantage as a nation of innovators. At the same time, the number of patent infringement claims we face as an industry has grown exponentially.

We, like many others, have also been subject to the threat of monumental damages awards -- the likes of which RIM faced in the NTP litigation -- and have agreed to license patents at rates that greatly exaggerate the contribution of the patented invention. Palm and other members of the Coalition attribute this phenomenon in significant part to forum shopping, the disparity among damage measures applied by our country's courts and the low hurdle to imposition of triple damages for willful patent infringement. For these reasons, Palm adds its voice to the call for immediate patent reform.

Palm, Inc. is a \$1.6 billion high technology company, founded in 1992 and headquartered in the heart of Silicon Valley. Today, millions of Americans rely on Palm devices,

