

Testimony of Anthony Peterman,

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before the

**U.S. House of Representatives Judiciary Subcommittee on
Courts, the Internet and Intellectual Property**

regarding

“H.R. 1908, The Patent Reform Act of 2007”

April 26, 2007

Mr. Chairman and members of the Subcommittee, my name is Anthony Peterman and I am the legal director for patents for Dell Inc. Dell welcomes the opportunity to appear before you today on this important topic. We commend you Mr. Chairman, Ranking Member Smith, Chairman Conyers, Subcommittee Ranking Member Coble and other Committee cosponsors of this bill for having introduced the "Patent Reform Act of 2007" and for your commitment to improving our patent system. You have signaled the overwhelming need for real and comprehensive reform by your thoughtful legislation and the expedition of your efforts so early in the new Congress.

The patent system is clearly under duress: warning flares have been going off for the past decade. At first, it was probably noticeable to only those of us dealing with patents and patent law every day. But, certainly over the past five years, ever more distant and neutral observers – whether the National Academy of Science, the Federal Trade Commission or the Antitrust Modernization Commission – all have noted with degrees of alarm the buckling of the foundations of the patent system as we know it: from a beleaguered PTO where patent quality has suffered from the shear volume and complexity of scientific advances, to the ever-increasing disputes over patent quality that have spilled over into an explosion of lawsuits in the courts, to the rare phenomenon of watching the Supreme Court increasingly taking over the role of "substantive arbiter" of legal doctrines fundamentally misconstrued at the appellate level.

Yes, it is time for patent reform. And that is why we commend all of you for your timely and significant work product contained in H.R. 1908.

H.R. 1908 addresses three major areas where we believe reform is now needed: (1) improving the quality of patents issued by the PTO; (2) re-establishing fairness and evenhandedness for all parties in how patent disputes are handled and enforced by the courts; and (3) clarifying certain areas of substantive law and patent law doctrine that have fallen away from fundamental precepts rooted in fairness and equity.

And for these reasons, Dell strongly supports the approach and substance of H.R. 1908. We look forward to working with as you proceed with your efforts. As I will describe in greater detail, there are a few areas in which some further clarification or changes to the language would be positive, specifically the section on venue. And, there are some issues not currently in the bill that we believe merit consideration, specifically repeal of Section 271(f).

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The computer and software industry is a creative engine that powers innovation and growth throughout our economy. The industry's products and services give individuals and organizations the tools they need to operate intelligently, efficiently and productively. Indeed, over the past thirty years, computers and software have become critical to our economic success, business competitiveness and personal quality of life. People worldwide rely on the industry's tools to communicate, to connect to the world, to get things done more efficiently in the workplace, and to more fully enjoy the arts, hobbies and leisure activities.

Patent law plays a central role in the computer industry's success. Companies from our industry consistently are among the largest recipients of US patents. Because our industry is at

