



February 12, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Chairmen and Ranking Members of the House and Senate Committees on the Judiciary,

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) is a group of nearly 50 Silicon Valley-based innovative startups, inventors, investors and entrepreneurs. Collectively, we have launched dozens of companies in areas ranging from biotechnology to medical devices and wireless technology. We invent real things and create real companies. We also rely on the strength of the U.S. patent system to create these companies, breakthroughs and jobs. In no other country on earth could we do what we do, and it is a direct result of the value the U.S. places on invention and intellectual property.

A strong patent system provides the assurance that if the inventor and investor take a risk and create a successful product or technology, they can protect that idea and be rewarded for it before being overrun by competitors. This assurance is crucial. It provides a sound foothold to begin competing in the marketplace, and ensures larger companies and foreign competitors cannot simply take the inventors' product or technology and drive them out of the market.

Unfortunately, Congress is again considering legislation that would fundamentally alter this dynamic and make it dramatically harder for start ups and innovators in the U.S. to continue to flourish and thrive. Legislation, such as the Innovation Act, would make valid U.S. patents much more difficult to enforce when held by small companies and would undercut the vibrant

culture of invention and investment that has created countless new companies, driven job growth and provided the foundation of America's competitiveness. America, since its founding, has created more patents proportionately by individuals and small companies versus large companies than any other country. We need to support and empower our inventors and entrepreneurs, not devalue their work to benefit large corporations and foreign competitors who view intellectual property held by small entities as an inconvenient burden to their profits.

Our members, and the inventor community in Silicon Valley and throughout the U.S., urge Congress to do **two things**:

- First, do not legislate without taking into account the dramatic changes that have occurred in the patent litigation landscape in the past year, and
- Begin work on a set of reforms that are actually pro-innovation, pro-small inventor, and that empower the investment in technology and the entrepreneurship that leads to new companies and industries. The Innovation Act does none of these things, rather it protects large companies' ability to routinely infringe the patents of smaller competitors.

It seems inconceivable to us that Congress could consider legislation impacting the most dynamic segments of our economy while largely ignoring what is happening in the courts and in the marketplace.

Recently, Supreme Court decisions, the Federal Trade Commission, the USPTO, and the Judicial Conference have addressed nearly all of the issues that many have claimed will fix the “patent troll” problem.

In its *Alice Corp. v. CLS Bank Int'l* decision, the Supreme Court (for the fourth time in as many years) held that an invention was not eligible for patent protection under 35 U.S.C. § 101 because the invention was directed to the “[l]aws of nature, natural phenomena, [or] abstract ideas.” This significantly narrowed the scope of patentability for many software based business model applications.

In a second recent case, Octane Fitness, LLC v. Icon Health & Fitness, Inc. the Court significantly lowered the threshold for judges to award attorneys' fees in patent cases where one party demonstrates inappropriate or abusive behavior. This judgment directly addresses the call for a system that punishes abusive behavior in litigation by establishing a clear standard for fee shifting that is already starting to have an impact.

The FTC also stepped in and exerted its legal authority last year to punish a notorious patent assertion entity with a history of abusive behavior.

The Judicial Conference is making improvements to rules for discovery and pleading requirements in patent cases that will take effect in December 2015.

The USPTO is also tackling patent quality and has recently appointed the first Deputy Director for Patent Quality.

Finally, as a likely result of many of these developments, the filing of U.S. patent infringement cases dropped 40% from September 2013 to September 2014 according to patent analytics firm Lex Machina.

These developments are having an impact. What Congress is currently considering in the Innovation Act is not just unnecessary, it would do real damage to, not just our companies, but to the entire innovation ecosystem in the U.S.

We join other major patent owners, researchers, inventors, universities and startups in a willingness to collaborate to find narrow, tailored solutions that fit real problems. We do not support a major overhaul to our patent system to lower the costs for major corporations and foreign competitors who flout the intellectual property of others and wish to eliminate the ability of these patent owners to seek remedy. To the extent small retailers are the target of abusive patent demand letters, let's fix that. The FTC has already shown it has the legal authority to address the problem and is willing to take action.

The U.S. has a 200-year legacy of respecting invention that traces its roots to the Constitution. Our system can always be improved, but we must prioritize the role that inventors, entrepreneurs and job creators play and we must recognize that they are dependent on strong patent protection to drive investment and support their success in the market. Large companies have many different assets to protect their business, small inventors and startups require the protection of their sweat and equity for which the patent system was created.

We are committed to working with the leaders in Washington on a set of solutions to strengthen our patent system and address abuses in a way that does not harm U.S innovation leadership or threaten our place as the most inventive, creative and dynamic economy in the world. USIJ looks forward to working with the Judiciary Committees to ensure that the patent system is strengthened.

Again, thank you for your leadership on these important issues.

Sincerely,



Charles Giancarlo
Chairman of the Board of Advisors for The Alliance of U.S. Startups and Inventors for Jobs

Cc: Members of the House and Senate Judiciary Committees