USIJ

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

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

Dear Chairman Goodlatte and Ranking Member Conyers,

We write to you as members of the Alliance of U.S. Startups and Inventors for Jobs (USIJ). The USIJ is a diverse group of Silicon Valley-based inventors, entrepreneurs, venture capitalists, startup companies, incubators and research institutions. We have come together in the interest of safeguarding our nation's innovation ecosystem.

The research and development that our companies and institutions do has led to numerous breakthrough technologies in fields including medical devices, drug products, mobile technologies and cloud computing.

Our entrepreneurs, venture capital members and incubators have – for many years – founded and financed dozens of companies that have created billions of dollars of value and thousands of jobs.

We invent real things and create real companies, and we are concerned that efforts to reform the patent system in the U.S. will harm our ability to lead the world in both of these things. This would be a huge loss for the entire U.S. innovation ecosystem and our global competitiveness.

If Congress makes it more difficult and expensive to protect the intellectual property we create, less will be created. It is that simple. We rely on a strong patent system that allows us to both effectively enforce our property rights, and efficiently defend ourselves when larger competitors make claims against us. Unfortunately, H.R. 9 – the Innovation Act, would make it nearly impossible for venture-backed startups to do this and only seems designed to benefit large, entrenched companies.

The importance of strong and reliable patent protection for venture-backed startups in innovative industries such as medical devices, drug products, communications and IT cannot be overstated. Indeed, a recent MIT study on the success of Silicon Valley noted that one of the top indicators of success is, "*Startups that get control over their intellectual property in their first year through patents*."[1]

We were very concerned that a recent House Judiciary Committee hearing on H.R. 9 gave short shrift to concerns raised by the National Venture Capital Association (NVCA). We share the same concerns as the NVCA and, as VCs, entrepreneurs and venture-backed startups ourselves, it was disappointing to see some on the Committee question the motivations of NVCA. The potential gravity of the changes to the U.S. patent system deserve a serious conversation where all stakeholders' views are respected.

We understand the various patent reform proposals found in the Innovation Act are designed to address abusive behavior that has led to expensive litigation and deceptive practices by those who have made a business out of patent litigation. But for those of us who have made a business out of invention and creating companies, they could have a devastating effect.

The Innovation Act contains several core provisions that, taken together, would significantly harm venture-backed startups.

The bill's mandatory delay of essential discovery until late in the trial process forces all parties to spend money and time before they know the essential merits of their case. This is extremely risky for a small company which would be forced to spend a tremendous amount of money (even in a case with a high probability of success) because the critical information to determine the merits of the case will not be available to the startup.

In addition, the Innovation Act's threat of mandatory fee shifting radically escalates the risk and expense to startups. The Innovation Act's fee shifting provision will add an additional stage at the end of every patent trial in the U.S. that will deter plaintiffs and defendants from aggressively defending themselves. It will force many small businesses to settle prematurely when facing a large company or well-funded non-practicing entity on the other side. These entities can handle an expensive trial and the threat of mandatory fee-shifting, while most venture-backed startups cannot. This provision will not impact large corporations or well-financed NPEs, but it may very well make pursuing legal recourse for infringement or defending against alleged infringement financially ruinous for many venture-backed startups.

This situation is compounded by a provision in the Innovation Act that would allow the joinder of "interested parties" when a non-prevailing party is unable to pay fees and expenses assessed under H.R. 9's fee shifting provision. We understand the intent is to address the issue of shell corporations which finance abusive lawsuits; however, the ounce of prevention offered by this provision would have dramatic unintended consequences. Investors in innovative startup companies, particularly in the technology and life sciences industries, know that in the event of a product success the companies they invest in have a high likelihood of being sued by patent

[1] http://m.bizjournals.com/sanjose/blog/techflash/2015/02/somas-hot-but-study-finds-heart-of-tech-success-in.html?ana=e_du_wknd&s=article_du&ed=2015-02-14&u=xVuE3P+KD4rm2d5NnbDlA3Jyig5&t=1423933353&r=full

holders, or might need to sue companies infringing their patents. This joinder provision would cause many venture capitalists to avoid investing in innovative startups that are increasingly dependent on their patent portfolios. It could also force them to quickly abandon their investments when litigation becomes necessary to either enforce patents, or defend infringement claims.

Finally, we believe that the provision in the Innovation Act which would stay customer suits is overbroad and unnecessary. Courts already have at their disposal a balanced body of law to ensure efficient and consistent resolution of related infringement issues, including consolidation of cases under Rule 42(a), or under the auspices of the Judicial Panel on Multi-District Litigation ("MDL"). These rules are more than sufficient to address any abusive situations.

While we have specific and profound concerns with the approach to patent reform taken by H.R. 9, we believe that reform is needed in certain areas. We would welcome the opportunity to work with you in this process to make sure the right legislation, not just any legislation, is passed into law.

Thank you for your attention to our views. We will continue to highlight our concerns as this process moves forward.

Sincerely,

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Cc: Members of the House Judiciary Committee
Speaker John Boehner
Majority Leader Kevin McCarthy
Minority Leader Nancy Pelosi
California Congressional Delegation