

John J. Castellani

President & Chief Executive Officer

January 15, 2015

The Honorable Robert W. Goodlatte
Chairman, House Judiciary Committee
United States House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte:

On behalf of the Pharmaceutical Research and Manufacturers of America (PhRMA), I am writing to thank you for your leadership in the effort to curb abusive practices that can arise in patent litigation and enforcement. PhRMA looks forward to working with the House Judiciary Committee to ensure that these abusive practices are addressed without inadvertently degrading the ability of legitimate patent holders to protect and enforce legitimate intellectual property rights.

Strong intellectual property protections are crucially important to the U.S. biopharmaceutical industry and the patients we serve. The ability to protect and enforce patent rights is absolutely essential to sustaining investments in research and development, supporting the millions of domestic jobs created by the biopharmaceutical industry and providing patients with access to innovative new therapies to treat cancer, heart disease and other serious illnesses. We look forward to working with you and the Committee in the new Congress to develop legislation that strikes the appropriate balance.

At the outset, we thought it useful to identify for you and the Committee four of the provisions that were included in reform proposals offered during the last Congress, which would raise significant concerns because of the significant negative impact they would have on our ability to enforce legitimate patent interests. They include:

- Increasing pleading requirements for patent infringement claims in a way that could impede prompt and effective access to the courts by patent owners, such as the requirements to identify all complaints that ever previously asserted the patent(s) in suit, and to include whether any licensing requirements have been imposed with respect to the asserted patent(s) by a government and whether the patent(s) have the potential to be considered essential by a standard-setting body. These requirements will impose increased risk and expense for the enforcement of legitimate patent claims and have little, if any, direct impact on those prosecuting questionable or abusive claims.

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- Imposing limitations on discovery until claims construction hearings are completed. In our view, such a provision will have the effect of delaying resolution and increasing costs for both plaintiffs and defendants alike in legitimate patent litigation;
- The extent of patent ownership disclosures, including, for example, extensive disclosures of transfers of patent ownership between entities *of the same corporate family*. This level of disclosure significantly increases the burden of compliance and the risk of non-compliance for legitimate patent holders; and
- Making cases that end with a covenant not to sue eligible for fee shifting. Covenants not to sue are an important way to help resolve and streamline litigation between legitimate patent holders and defendants. By attaching a fee shifting possibility to the use of these covenants, the legislation will create a disincentive to use these covenants to focus disputes, streamline and ultimately resolve litigation.

We would appreciate your considered attention to these concerns and, we look forward to working with you and the Committee to address these issues as well as those that may have more recently arisen as a result of judicial decisions and changes affected by the Patent and Trademark Office. PhRMA is ready to fully engage to ensure a legislative product that effectively curbs abusive practices in patent litigation and, at the same time, neither undermines nor weakens incentives for research and development of new medicines in the United States. To that end, I respectfully request the opportunity to meet as soon as your schedule allows so that we can discuss these issues.

Again, thank you for your leadership and your attention to these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'JJ Castellani', written in a cursive style.

John J. Castellani
President & Chief Executive Officer