September 19, 2013

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairmen Leahy and Goodlatte and Ranking Members Grassley and Conyers,

On behalf of industry groups, professional organizations, and leading companies in America's most innovative industries, including technology, communications, manufacturing, consumer products, energy, financial services, medical devices, software, pharmaceuticals, and biotechnology, we are writing to express our opposition to recent legislative proposals expanding the America Invents Act's "covered business method patent" program. These proposals could harm U.S. innovators – a driving force of economic growth and job creation in this country – by unnecessarily undermining the rights of patent holders.

Under Section 18 of the America Invents Act ("AIA"), transitional post-grant review proceedings for "covered business method patents" (CBM program) allow the USPTO to take a second look at a patent after that patent's grant or reissuance, in order to determine its validity. A "covered business method patent" is a business method patent that relates to a "financial product or service." Unlike regular post-grant review proceedings, which require that a proceeding must be requested no later than nine months from a patent's grant date or reissuance date, a request for a "covered business method patent" proceeding can be made at any time until September 16, 2020 – the date the transitional program is scheduled to sunset.

During congressional consideration of the AIA, proponents of Section 18 argued that it was a necessary and temporary measure to review a very narrow class of financial-services-related patents. However, recently-introduced legislation proposes to make the transitional proceedings of Section 18 permanent and expand the definition of "covered business method patent" to include data processing patents used in any "enterprise, product, or service." This means that any party sued for or charged with infringement can *always* challenge an extremely broad range of patents at the USPTO. The request for a proceeding need not be related to financial products or services and can be submitted any time over the life of the patent.

This would have far-reaching implications, because data processing is integral to everything from cutting-edge cancer therapies to safety systems that allow cars to respond to road conditions in real time to prevent crashes. Subjecting data processing patents to the CBM program would thus create uncertainty and risk that discourage investment in any number of fields where we should be trying to spur continued innovation.

The US patent system for more than 200 years has succeeded spectacularly in promoting “the progress of science and useful arts,” as the Founders intended, in part because it has always provided the same incentives for all types of inventions. To expand and make permanent the CBM program would be to turn ill-advisedly and irrevocably in a new direction — discriminating against an entire class of technology innovation.

Moreover, expanding the CBM program could inadvertently undermine many valid patents by giving infringers a new procedural loophole to delay enforcement. Because of the way Section 18 works, infringers would be able to delay legitimate lawsuits they face in district court by initiating CBM proceedings at the PTO. This would buy time to gain market share on innovative, patent-holding competitors.

Expanding Section 18 will not only stymie innovation at home, but it could also impact the relationship of the United States with its trading partners. We have already received questions from our colleagues abroad regarding how this expansion could be justified as compatible with the obligation of the United States under the Agreement on Trade-Related Aspects of Intellectual Property Rights to make patents “available and patent rights enjoyable without discrimination as to . . . the field of technology.” Apart from this question, however, it is clear that if this discriminatory treatment of a select category of patents opposed by special interests in the United States were to be made a permanent feature of U.S. law, it would create a harmful precedent for our trading partners to enact exceptions in their laws to protect special interests in their countries.

As innovators, educators, developers and US employers, we hope Congress will set aside the ideas related to expanding the CBM program as it looks to further improve our patent system.

We look forward to working with you to achieve those goals.

Sincerely,

3M
ActiveVideo Networks, Inc.
Adobe Systems
Advanced Technology Ventures
Allison Transmission, Inc.
Architecture Technology Corporation
Beckman Coulter, Inc.
BGC Partners, Inc.
Bi-Level Technologies
Biotechnology Industry Organization
Boston Scientific
Brash Insight Corp.
BSA - The Software Alliance

Cabochon, Inc.
California Healthcare Institute (CHI)
Cantor Fitzgerald L.P.
Caterpillar, Inc.
Ciencia, Inc.
Cleveland Medical Devices Inc.
Colorado Technology Consultants
CONNECT
Cotera Inc.
The Cummins Allison Corporation
Dolby Laboratories
Domain Associates
Donohue Consulting, Inc.
The Dow Chemical Company
DR Systems, Inc.
DuPont
Eatoni Ergonomics, Inc.
Eli Lilly & Company
Embedded Systems LLC
Entrepreneurs for Growth
Entropic Communications, Inc.
ExploraMed Development, LLC
Fairchild Semiconductor
Fairfield Crystal Technology
Fallbrook Technologies Inc.
Flocel Inc.
Forsight Labs
ForSight VISION4, Inc.
Foundry Newco XII, Inc. (d/b/a Twelve)
Freescale Semiconductor
GearMax USA Ltd.
General Electric
General Nanotechnology LLC
Global Network Computers
Great Lakes Neuro Technologies Inc.
Holaira, Inc.
IBM
IEEE-USA
Illinois Tool Works Inc.
Innovation Alliance
Inogen, Inc.
Insight Legal
Interknowlogy
Inventors Network of the Capital Area
IP Advocate
IP Pipeline Consulting, LLC
Irwin Research & Development, Inc.

Johnson & Johnson
Karbonique, Inc.
KeepSight LLC
Kovogen, LLC
Lauder Partners, LLC
Licensing Executives Society (USA & Canada), Inc.
Lightstone Ventures
MediaFriends, Inc.
Medical Device Manufacturers Association
MH Systems, Inc.
Micron Technologies
Microsoft
Miramar Labs, Inc.
Morgenthaler Ventures-Life Sciences
National Association of Manufacturers (NAM)
Neodyne Biosciences, Inc.
NeoTract, Inc.
NeuroPace, Inc.
NeuroWave Systems Inc.
Nevro Corp.
NuGEN Technologies, Inc.
NuVasive, Inc.
OL2, Inc. (OnLive)
Orbital Research Inc.
Patent Office Professional Association
Power Auctions LLC
Precision Combustion
PreEmptive Solutions
Procter & Gamble
Prometheus Research, LLC
Qualcomm
Rearden Companies, LLC
Restoration Robotics, Inc.
Sapheon, Inc.
Software Partners LLC
Soleon Robotics LLC
Tessera
The Foundry LLC
TM Technologies, Inc.
Trading Technologies
U.S. Business and Industry Council
Vibrynt, Inc.
Xerox Corporation

Cc: Members of the Senate Committee on the Judiciary
Members of the House Committee on the Judiciary