November 19, 2013

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

The Honorable John Conyers, Jr.
House Judiciary Committee
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Ranking Member Conyers:

The Innovation Alliance appreciates the Judiciary Committee's efforts to craft patent legislation, and in particular, we commend Chairman Goodlatte for the improvements made to the Innovation Act (H.R. 3309) in the Manager's Amendment released yesterday.

Despite these improvements, the Innovation Alliance continues to have significant concerns that some provisions would have undesirable consequences for the patent system as a whole. Overly detailed pleading requirements, inflexible discovery limits, and broad provisions permitting stays against certain parties have the potential to undermine the enforceability of all patent rights, no matter how valuable the patent, and thus potentially incentivize infringement. When patent rights are weakened, the incentive for investing in innovation is diminished. As this Committee knows, our innovation ecosystem drives economic growth and job creation, and we cannot risk jeopardizing it.

We applaud Chairman Goodlatte's decision to drop most of the provisions relating to covered business patents. We also support the continued inclusion of language requiring the U.S. Patent and Trademark Office to use the same claim construction standards in post-grant and inter partes reviews that district courts use in litigation.

Further changes are necessary to ensure the bill targets abusive practices in patent litigation without weakening all patent rights or penalizing good-faith efforts to enforce those rights. In particular, we believe the customer-suit exception should be narrowed to target small business end-users and retail interests that motivated the provision. As currently drafted, the provision applies to all entities throughout the supply chain, including those that benefit most from the sale of an infringing article. In many cases, it would require a patent holder to prove indirect infringement along with direct infringement. Taken together, these changes will result in significantly more litigation, not less.

The Innovation Alliance also remains concerned that the heightened pleading and transparency in ownership requirements contained in the Manager's Amendment go well beyond

what is needed to provide defendants with detailed knowledge of the claims against them and the identity of the patent holder bringing those claims. We support heightened pleading standards, but we believe the provisions in the Manager's Amendment create significant burdens for patent holders to provide information that may simply not be available prior to the commencement of a case. Similarly, we support increased transparency but believe some of the transparency provisions place too great a burden on patent holders for the benefit they provide defendants.

We also believe that a party invoking post-grant review procedures should not be permitted to pursue piecemeal challenges to patent validity, and for that reason oppose the repeal of the "could have raised estoppel" standard for subsequent patent litigation.

We have long supported ensuring that the USPTO has full access to the fee revenue that it collects. No other change would more effectively enhance patent quality in the United States, and therefore, we strongly support H.R. 3349 and its inclusion in the underlying bill.

The Innovation Alliance appreciates your continued willingness to hear input from interested stakeholders and looks forward to working with you to improve the bill further as it moves through the legislative process.

Sincerely,

Brian Pomper
Executive Director
Innovation Alliance