May 18, 2015

Representative Suzan DelBene
318 Cannon House Office Building
Washington, DC 20515

Dear Representative DelBene:

As representatives of Washington State's diverse life sciences industry, we are writing today to voice our serious concerns with H.R. 9, the Innovation Act. We respectfully urge that you oppose this bill in its current form.

Washington State plays a vital role in the life sciences industry, and particularly the research and development within that field. Collectively, we have helped to advance therapies and technologies that not only treat but cure. The life sciences industry in Washington State supports at least 92,400 jobs and contributes $11.4 billion to Washington's GDP. Our ability to continue performing this work, contribute to our state's innovation economy, and support the jobs and economic growth depends on an equitable patent system, which allows for a range of technologies and innovations, both speedy and laborious.

Research in the field of life sciences is an extremely risky, expensive and lengthy endeavor. Attracting investment into companies developing the next generation of treatments, therapies, and technologies depends on a strong, accessible patent system. This measure increases the burden of defending patent rights by excessively increasing expenses and potential risk to patent owners. Further, the proposed legislation would impede the ability of universities and research institutes to forge mutually beneficial agreements with potential licensees and venture capitalists interested in turning research discoveries into commercially viable and socially beneficial products and processes.

The biomedical industry in Washington consists primarily of small, entrepreneurial, and venture capital-backed firms that have yet to bring products to market. For these companies, intellectual property (IP) is typically their most valuable, and sometimes only, asset. The defense of suits, particularly by bio-tech startups, diverts precious capital from research and development (R&D) and business development towards the costs of defending their intellectual property rights.

Broad patent legislation such as H.R. 9 will harm the ability of universities and research institutes to protect and effectively license their research discoveries to industry so that life-saving medical

treatments can be developed for the benefit of the public. It's critical that efforts to prevent abuses in the patent system are narrowly tailored to prevent collateral damage to university technology transfer, research patents and licenses, and the overall strength of the U.S. patent system.

Conversely to the drafter's purported intent, H.R. 9 contains patent litigation-related provisions that would actually threaten rights of biomedical innovators to enforce their rights. Of particular concern are the mandatory presumptive stays of discovery in patent infringement cases; enhanced pleading requirements for patent infringement cases, mandating the inclusion of highly specific information, much of which is not within the ability of patent owners to know at the outset of litigation; mandatory fee shifting; and a joinder provision under which "interested" parties such as universities, independent research institutes, inventors, investors, or companies could be joined in litigation as unwilling co-plaintiffs, exposing them to the cost of the defendant's attorney fees and other litigation expenses

Of greatest concern, Innovation Act does not accurately reflect the current state of patent litigation in the United States – the legislative text has remained largely unchanged since it was introduced in the 113th Congress (H.R. 3309), despite the changed patent litigation landscape as a result of the implementation of the America Invents Act (AIA), recent Supreme Court cases, and key administrative changes at the US Patent and Trademark Office (PTO). At a minimum, the key provisions of the Innovation Act that are no longer necessary or relevant should be reconsidered to represent the developments that have occurred in the past year.

While there is strong interest in addressing abusive patent litigation practices by "patent trolls," H.R. 9 does not meet these goals and instead prolongs, complicates and increases the cost of patent litigation for all patent owners across all technology areas.

Patent litigation legislation must represent the full spectrum of different industries and sectors reliant on a well-functioning U.S. patent system and the enforcement mechanisms it provides. Unfortunately, the Innovation Act falls short of this goal, and we respectfully ask you to vote against this legislation in its current form.

Thank you for your consideration, and we look forward to working with you to enact patent litigation legislation that is more supportive of the life sciences innovation ecosystem in our state.

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cc: Governor Jay Inslee
Senator Maria Cantwell
Senator Patty Murray