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June 13, 2011

The Honorable John A. Boehner  
Speaker of the House of Representatives  
Office of the Speaker  
H-232 The Capitol  
Washington, DC 20515

The Honorable Nancy Pelosi  
Office of the Democratic Leader  
H-204, The Capitol  
Washington, DC 20515

Dear Mr. Speaker and Mrs. Pelosi:

We write to express the support of the software and computer company members of the Business Software Alliance (BSA)\* for H.R. 1249, "The America Invents Act".

We applaud your continuing efforts to modernize our patent laws. Software, computers and the Internet have over the past three decades transformed for the better our economy, our work and private lives. The indispensable element of our industry's success, today and into the future, is innovation. A fair, balanced and effective patent system is indispensable to promoting R&D investment, job creation, global competitiveness, and economic growth.

BSA member companies believe the time has arrived to move beyond old controversies and enact a balanced, consensus patent reform bill. The key elements of H.R. 1249 include:

**Funding the U.S. Patent and Trademark Office (USPTO).** The USPTO needs an adequate fee structure in order to achieve the import goals of continuing to reduce pendency, enhance patent quality and

*\* The Business Software Alliance ([www.bsa.org](http://www.bsa.org)) is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognizing that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected, and secure. BSA members include Adobe, Apple, Autodesk, AVEVA, AVG, Bentley Systems, CA Technologies, Cadence, CNC/Mastercam, Compuware, Corel, Dassault Systèmes SolidWorks Corporation, Dell, Intel, Intuit, Kaspersky Lab, McAfee, Microsoft, Minitab, PTC, Progress Software, Quark, Quest Software, Rosetta Stone, Siemens, Sybase, Symantec, and The MathWorks.*

improve the overall efficiency of its operations. User fees, paid by innovators to fund the essential services the Office provides, should not be diverted for other government purposes.

**“Weeding out” bad patents.** A post-grant review system for patents should be established to provide an early opportunity to challenge newly-issued patents to improve overall patent quality and, the inter partes reexamination process should be made more effective by removing existing disincentives and avoiding new barriers to instituting a reexamination.

**Allowing third parties to submit prior art.** Third parties should be allowed to submit prior art for the USPTO to consider in connection with pending published patent applications. The availability of this opportunity would enlist the public as a partner with the USPTO in promoting patent quality.

**Putting an end to the “False Marking” litigation cottage industry.** A very recent trend has seen aggressive litigation alleging, “false marking” of products containing patented inventions. The damages regime for false marking cases should be changed to prevent outsized awards where no one has suffered any actual harm.

The House bill also contains a number of improvements compared to the Senate bill passed some weeks ago. These include:

**Inter Partes Re-examination (IPR): H.R. 1249** provides a longer period of time (12 months instead of 9) for individuals to challenge a patent through re-examination proceedings. This will reduce the burden on court system and lower the overall costs related to patent disputes.

**Provides for Prior User Rights: H.R. 1249** creates a prior user rights defense to all patent infringement suits. This right is critical in a first-to-file system because many businesses do not patent every process or method that is part of their commercial operations. If they were to be compelled to patent every aspect of their systems we would create substantial additional burdens on the PTO and its examiners.

Over the past six years the Supreme Court and the Court of Appeals for the Federal Circuit have, through a series of important decisions, provided greater clarity in the law and that has, in turn, tended to curb

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abuses. Today, as a result of these decisions, the grant of injunctions is subject to a four-part test weighing the equities; determinations on venue are now subject to general principles of law; punitive triple damages are subject to a finding of objective reckless; and on the award of damages, the courts have revised previously prevalent rules that resulted in excessive awards such as rote rules of thumb for calculating damages and calculating damages on the value of entire products when the infringing patent constituted a small component element of the final product.

When the House first took up debate on patent reform nearly six years ago, our patent system was being disrupted by litigation aimed at obtaining windfall settlements that created inefficiencies and undue risk for innovators. At that time, trends in case law exacerbated this problem.

Finally, as the Committee moves the bill forward to the House floor, we urge that care be taken to ensure that the provisions establishing a transitional program for covered business method patents are not interpreted to apply to technologies that are common in business environments across all sectors and that have no particular relation to the financial services sector, such as computers, communications networks, and commercial software.

We look forward to continuing to work with you and leaders in the House towards prompt enactment of consensus patent reform legislation that makes our patent system strong and modern.

Sincerely

A handwritten signature in black ink, reading "Robert W. Holleyman, II". The signature is written in a cursive style with a long horizontal line extending to the right.

Robert W. Holleyman, II  
President and CEO

cc: The Honorable Lamar Smith  
Chairman, House Judiciary Committee

The Honorable John Conyers, Jr.  
Ranking Member, House Judiciary Committee

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cc: The Honorable Bob Goodlatte  
Chairman, House Judiciary Subcommittee on  
Intellectual Property, Competition, and the Internet

The Honorable Mel Watt  
Ranking Member, House Judiciary Subcommittee on  
Intellectual Property, Competition, and the Internet