February 10, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

The undersigned U.S. manufacturers congratulate you on your election as the 44th President of the United States and look forward to working with you on issues of importance to our nation.

We write today regarding the importance of the U.S. patent system to American manufacturing. The critical role of strong patent protection within our economy is often overlooked but is in fact a crucial underpinning of the American economy. The framers of the Constitution recognized this fact when they gave Congress the power to provide inventors "the exclusive Right to their respective Writings and Discoveries" in Article I, Section 8. We believe the importance of patents has not diminished since that time. Strong protection of patents and other forms of intellectual property are essential to American prosperity, particularly during the current economic crisis – a time when we need to develop new and improved products to stimulate economic activity.

Our companies are committed to making products in the United States and to competing globally. We develop innovations in product lines as diverse as advanced metals, aerospace and satellite technology, alternative energy, automotive technology, chemicals, currency counting equipment, electronics, elevators and escalators, entertainment technology, environmental technology, food and beverages, heavy machinery, information technology, medical devices, nanotechnology, optoelectronics, power production equipment, safety and security products, and thermoplastics.

The manufacturing sector is one of the most creative in the American economy. Every year, we invest billions of dollars in research and development, followed by billions more to manufacture our innovations. We rely on the U.S. patent system to protect our investments, and those

protections provide an incentive for us to continue manufacturing in the United States.

Recent Patent Reform Proposals

In the 110th Congress, legislation was introduced to make fundamental changes to the U.S. patent system. Proponents of the legislation were primarily large information technology and financial services companies. The legislation passed the House of Representatives in September 2007, but did not pass the Senate.

While we shared the desire to improve the patent system, we voiced concern that a number of provisions would have weakened rather than strengthened patent protection. In our view, those provisions could have harmed the competitiveness, investment and employment of our sector.

We feel strongly that the prosperity of a few companies within two industries should not come at the expense of a larger group of stakeholders. Therefore, we applauded the decision of Senate leaders to delay action on the legislation until consensus was developed. Now, as the proponents of the legislation introduced in the 110th Congress begin to lobby again for their proposals, we feel it is important to discuss again our concerns.

Flawed Justifications

At the outset, it is important to note that the justifications offered for the legislation are faulty. For example, there is no explosion in patent litigation. In 1993, lawsuits were 1.45% of patents granted. In 2007, lawsuits were 1.48% of patents granted. The number fluctuates from year to year, but it has never indicated a system out of control. (Source: USPTO Annual Reports, Federal Judicial Statistics)

Moreover, there is no explosion in patent damage awards. Adjusting for inflation, the median annual patent damages award has actually dropped slightly over the last 13 years. In constant dollars, the median was $3.9 million from 1995 through 2000, and $3.8 million from 2001 through 2007. (Source: 2008 Patent Litigation Study, PriceWaterhouseCoopers.)

One claim certainly is true - that the number of patent applications has increased significantly in recent years. We view increased patent

applications as a good thing, representing increased innovation that is crucial for American prosperity. It would be a terrible mistake to allow the increase in patent applications to become an excuse to undermine patent protections. Rather, Congress should take advantage of Americans' growing desire to invent by ensuring that the U.S. Patent and Trademark Office ("USPTO") has the resources and management to handle the increased number of applications in a thorough and timely manner.

Reducing Penalties for Patent Infringement - The Top Goal of the Proponents of Legislation Introduced in the 110th Congress

The top goal of those proposing the legislation introduced in the 110th Congress was to reduce penalties for patent infringement by changing the law of damages. This change would have elevated the importance of one of the fifteen *Georgia-Pacific* factors now considered in calculating patent damages. By giving this one factor - apportionment – a preeminent position in damage calculations, proponents could achieve the goal of reducing damage awards.

It is crucial to remember that patent damages are imposed only after patent validity and infringement are determined on the merits. In other words, those paying damages have been found to have unlawfully used intellectual property belonging to someone else.

Proponents of the legislation introduced in the 110th Congress attempted to shift the blame in patent litigation from the infringer to the patent holder. Under this notion, the infringer became the victim of an infringed patent holder seeking too much in damages. But the validity of this claim was never established and cannot be established because it is not accurate. While any litigation can result in a judgment too large or too small, the claim that patent plaintiffs routinely win outrageously large awards does not withstand scrutiny. Indeed, the premier example of excessive damage awards used by the proponents in the last Congress - the *Alcatel-Lucent v. Microsoft* decision – was overturned on the basis that the damages were indeed excessive under the existing law. Ironically, the very case the proponents used to demonstrate what is wrong with patent damages ultimately turned out exactly as they suggested it should turn out, with the purportedly excessive damage award overturned. The existing system worked, and it does work.

We believe that an objective review of litigation outcomes will indicate that the patent damages system accomplishes exactly what it is intended to accomplish - to reimburse patent holders for the loss of property taken by others, and to deter such infringement in the first place.

We encourage policy makers to reject the call for drastic changes to the law of patent damages. Reducing penalties for intellectual property theft will only encourage more of the same, which will deal a severe blow to the motivation of American inventors to create more and greater innovations in the future.

Recent Changes to U.S. Patent System

In addition to the points made above, it is important to remember that a number of fundamental changes to the patent system already have occurred through recent court decisions.

In *Ebay v. MercExchange* (2006), the Supreme Court limited the availability of injunctions by clarifying the applicability of the traditional four-factor test. The *Seagate* decision (2007) limited treble damages. In *KSR v. Teleflex* (2007), the non-obviousness standard was reinforced. The *ATT v. Microsoft* decision (2007) limited offshore infringement liability. The *Bilski* decision (2008) clarified the criteria for patenting "business methods." In *Volkswagen* (2008), a venue abuse was addressed.

Time and again, the courts have made significant changes to patent law, the full effect of which is not yet known. Clearly these decisions will limit legal options for patent holders in many cases. The controversial aspects of the legislation introduced in the 110th Congress, such as reducing penalties for infringement, threaten to tilt the system away from patent holders and toward infringers.

Investment and Jobs Are at Stake

America's system of patent protection is an incentive to manufacture in the United States. A number of provisions in the legislation introduced in the 110th Congress would decrease those protections, resulting in the reverse -- a disincentive to invest and employ more Americans.

A recent study focusing on the impact of apportionment legislation estimates that this change alone would put at risk up to 298,000 manufacturing jobs and reduce R&D investment by up to $66 billion. (Study available at www.mfgpatentpolicy.org.) This would be a negative outcome even when our economy is strong; at a time of economic crisis, it would be tragic.

One Area of Consensus - Improvements are Needed at the USPTO

One justification for the legislation introduced in the 110th Congress was "poor patent quality." Patent quality, however, is determined where patents are granted - the USPTO.

The legislation introduced in the 110th Congress dealt with patent issues on the back end rather than the front end, i.e., it attempted to deal with the symptoms of poor patent quality and growing pendency rather than addressing these issues directly. Many of the problems identified by legislative reform proponents as reasons for such reforms are best addressed instead by reforms of USPTO operations.

We believe consensus can be found by working to improve the USPTO. Indeed, there is general agreement that improvements are needed at the agency. Currently, the patent application backlog at the agency is more than 700,000 and the average pendency is more than 32 months. Both the Government Accountability Office and the Patent Office Professionals Association have detailed structural and resource problems at the agency.

A number of organizations, ranging from the U.S. Chamber of Commerce to the Center for American Progress, are now working with patent stakeholders across the spectrum to develop recommendations for improving the USPTO. Many companies and individuals who have battled over patent reform legislation are working together toward this goal.

We believe this effort can bear significant fruit and unite stakeholders rather than divide them. We encourage you to support and promote this process.

Conclusion

As proposals are made to change the U.S. patent system, we encourage you to consider the impact of these proposals on all stakeholders, not just a narrow group. Manufacturers and other patent stakeholders make great

investments in inventing new products for sale at home and abroad, and we rely upon a balanced patent system that is good for all innovators. Drastic changes, such as reducing penalties for patent infringement, will discourage innovation, resulting in reduced investment and lost jobs at a time when the United States can least afford it.

The justifications made for the legislation introduced in the 110th Congress do not withstand scrutiny. There is no explosion of patent litigation. There is no explosion in patent damages. The statistics simply do not bear out such assertions.

We do not oppose all legislative efforts to improve the patent system, but we feel that any legislative changes should benefit the broad spectrum of patent stakeholders. We urge you to resist changes that would benefit only a narrow group of stakeholders.

Substantial improvements to the system can be made by improving the operations of the USPTO, and many of these changes can be made administratively. We believe improving this agency is an area where consensus can be found among all stakeholders.

Our goal is for the U.S. patent system to continue to be the best in the world, and that it continue to encourage the kind of investment, product creation, and job creation that our companies generate. We look forward to working with you, other policymakers and other stakeholders to ensure this outcome.

Thank you for considering our views in this important matter.

Sincerely,

The 3D Source, Inc., Westbury, New York
AbTech Industries, Scottsdale, Arizona
Acclarent, Inc., Menlo Park, California
Acorn Cardiovascular, St. Paul, Minnesota
Adhezion Biomedical, Wyomissing, Pennsylvania
Adriot Medical Systems, Inc., Loudon, Tennessee
Advanced Medical Technology Association (AdvaMed)
AEgis Technologies Group, Huntsville, Alabama
Aero Marine Co., Port Townsend, Washington
Air Products and Chemicals, Inc., Allentown, Pennsylvania

American Broadhead Company Inc., Gonic, New Hampshire
Amidex, Inc., Lakewood, Colorado
AngioDynamics, Queensbury, New York
Animas, West Chester, Pennsylvania
APJeT, Inc., Santa Fe, New Mexico
Applied Technology Associates, Albuquerque, New Mexico
Aspiration Innovation, Inc., Fort Collins, Colorado
Asthmatx, Inc., Sunnyvale, California
BAE Industries, Inc., Auburn Hills, Michigan
Big Horn Valve, Inc., Sheridan, Wyoming
Biosense Webster, Diamond Bar, California
Brainstorm, LLC, Colorado Springs, Colorado
Calibra, Redwood City, California
Carbylan Biosurgery, Palo Alto, California
Cargill, Minneapolis, Minnesota
CHA Corporation, Laramie, Wyoming
CIC Photonics, Inc, Albuquerque, New Mexico
CLRS Technology, Costa Mesa, California
Columbia Medical, Santa Fe Springs, California
Contrast Optical Design and Engineering, Inc., Albuquerque, New Mexico
Corning Incorporated, Corning, New York
Crystal Clear Technologies, Inc., Menlo Park, California
Cummins Inc, Columbus, Indiana
Cummins-Allison, Mt. Prospect, Illinois
CVI Melles Griot, Albuquerque, New Mexico
Cyberonics, Houston, Texas
Dallas Optical Systems, Inc, Rockwall, Texas
DePuy Orthopedics, Warsaw, Indiana
DePuy Spine, Raynham, Massachusetts
DexCom, Inc., San Diego, California
Diamond Antenna and Microwave Corporation, Littleton, Massachusetts
Diamond-Roltran, Littleton, Massachusetts
Dolby Laboratories, San Francisco, California
Dow Corning, Midland, Michigan
Dynamet Technology, Inc., Burlington, Massachusetts
DuPont, Wilmington, Delaware
DxTech LLC, Merrimack, New Hampshire
Dynatronics, Salt Lake City, Utah
Edwards Lifesciences, Irvine, California
ElectroChem, Inc, Woburn, Massachusetts

Eleme Medical, Merrimack, New Hampshire
Element One, Boulder, Colorado
Energized Glass LLC, Fort Collins, Colorado
Ethicon Endo-Surgery, Cincinnati, Ohio
ExploraMed Development, LLC, Redwood City, California
Exxon Mobil Corporation, Irving, Texas
FarSounder, Inc., Warwick, Rhode Island
The Foundry, Inc., Menlo Park, California
Front Range Oil and Gas, LLC, Windsor, Colorado
Gen-Probe, San Diego, California
Headwall Photonics, Fitchburg, Massachusetts
Heritage Woods, Inc., Alto, Michigan
High Peaks Materials, LLC, Commerce City, Colorado
Hill-Rom, Inc., Batesville, Indiana
Hunt Control Systems, Inc., Fort Collins, Colorado
Inovadeas, Fort Collins, Colorado
Insightful Products, Scarborough, Maine
InstruTech, Inc., Longmont, Colorado
InSync, Inc., Albuquerque, New Mexico
Interrad Medical, Inc., Plymouth, Minnesota
Irwin Research & Development, Yakima, Washington
Keeton Industries, Wellington, Colorado
Kinetic Concepts, Inc., San Antonio, Texas
Kyzen Corporation, Nashville, Tennessee
LandNet, Inc., Loveland, Colorado
Lappintech LLC, Douglas, Wyoming
Laser Light Engines, Salem, New Hampshire
Lateral Reservoir Stimulation, Fort Collins, Colorado
Liberty Research Co., Inc., Gonic, New Hampshire
Life Technologies, Foster City, California
LogicMark, Fairfax Station, Virginia
Look Dynamics, Inc., Longmont, Colorado
Manufacturing Alliance on Patent Policy (MAPP)
Mar-Bel Associates, Naples, Florida
Masimo, Irvine, California
Materials Systems Inc., Littleton, Massachusetts
McCarter Technology, Inc., La Porte, Texas
Meadowlark Optics, Frederick, Colorado
Medical Device Manufacturers Association (MDMA)
MedRad, Pittsburgh, Pennsylvania

MicroCube, Fremont, California
Milliken & Company, Spartanburg, South Carolina
Monsanto Company, St. Louis, Missouri
Nanosys, Inc., Palo Alto, California
NeoVista Inc., Fremont, California
Neuronetics, Inc., Malvern, Pennsylvania
NuVasive, Inc., San Diego, California
Optical Research Associates, Westborough, Massachusetts
OtterBox, Fort Collins, Colorado
Q-Med Scandinavia, Inc., Princeton, New Jersey
Parts on Demand, Louisville, Colorado
PE Fusion, LLC, Gillette, Wyoming
PepsiCo, Purchase, New York
Physical Sciences, Inc., Andover, Massachusetts
Pomoco, LLC, Centennial, Colorado
PopPack LLC, San Francisco, California
Rearden, San Francisco, California
S&C Electric Company, Chicago, Illinois
Scientific Solutions, Inc., Nashua, New Hampshire
Sculptured Homes, LLC, Birmingham, Michigan
Snaptron, Windsor, Colorado
SoftRay, Inc., Laramie, Wyoming
SO Sound Solutions, Louisville, Colorado
StaticOff LLC, South Portland, Maine
Syngenta, Golden Valley, Minnesota
Tegracore LLC, Fort Collins, Colorado
Terra Moya Aqua, Inc., Cheyenne, Wyoming
Texas Instruments, Dallas, Texas
Tranex Inc., Colorado Springs, Colorado
TRS, Inc., Boulder, Colorado
TruTouch Technologies, Albuquerque, New Mexico
Unicover Corporation, Cheyenne, Wyoming
United Technologies, Hartford, Connecticut
Unitron, Dallas, Texas
Vail Metal Systems, LLC, Edwards, Colorado
Value Plastics, Inc., Fort Collins, Colorado
VentureAdAstra, Anchorage, Alaska
Vibrynt, Inc., Redwood City, California
Walker Manufacturing Company, Fort Collins, Colorado
Wellington Operating Company, Wellington, Colorado

Wellington Water Works, Wellington, Colorado
WildBlue Communications, Inc., Greenwood Village, Colorado
Wolf Robotics, Fort Collins, Colorado
Wyoming Silicon, LLC, Sheridan, Wyoming
Zimmer Inc, Warsaw, Indiana