

March 8, 2010

The Honorable Patrick Leahy  
U.S. Senate  
433 Russell Senate Office Building  
Washington, DC 20510-4502

Dear Senator Leahy:

We write as the presidents of six higher education associations to express our strong support for the substitute amendment to S. 515, the Patent Reform Act of 2009, announced on March 4 by Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), Ranking Member Jeff Sessions (R-Ala.), and Senators Orrin Hatch (R-Utah), Chuck Schumer (D-N.Y.), Jon Kyl (R-Ariz.), and Ted Kaufman (D-Del.). We believe that this bipartisan agreement, the latest step in over five years of deliberations in Congress, represents the successful culmination of a thorough, balanced effort to update the nation's patent reform system to support more effectively the nation's innovative capacity in the increasingly competitive global environment of the 21<sup>st</sup> century.

Our universities and medical colleges are this nation's principal source of the basic research that expands the frontiers of knowledge. The patent system plays a critical role in enabling these institutions to transfer the discoveries arising from basic research into the commercial sector for development into products and processes that benefit society.

From the beginning of this process in 2004, the legislation under consideration in Congress has retained two key reform elements called for by the seminal National Academies report on patent law: harmonizing U.S. law with that of the international community by adopting a first-inventor-to-file procedure, and improving patent quality and reducing litigation costs by creating a post-grant administrative procedure for challenging patents in their first year.

Over the course of these deliberations, the Senate and House Judiciary Committees have been responsive to the interests and concerns of universities. Last May, our associations endorsed the compromise legislation reported by the Senate Judiciary Committee but noted that further improvements could be made in the legislation's post-grant review procedures.

Significant improvements have been made in those procedures, particularly the following:

- a substantially increased threshold for initiating a post-grant or *inter partes* review,
- strengthened estoppel provisions prohibiting a petitioner from raising in a subsequent challenge the same patent issues that were raised or reasonably could have been raised in the prior challenge,

- authority for the Director of the U.S. Patent and Trademark Office (USPTO) to reject a request for an ex parte reexamination or a post-grant or *inter partes* review if the same or substantially the same prior art or arguments were presented to the Office previously.

These changes will greatly reduce the ability to use post-grant procedures for abusive serial challenges to patents and thereby also reduce the administrative burden on the USPTO. The resultant procedures will provide faster, less costly alternatives to civil action to challenge patents, improving patent quality by eliminating invalid patents, while reducing abusive challenges and litigation costs.

This legislation does not contain everything universities have advocated. But given the heterogeneous nature of the patent community, balanced legislation cannot include every provision that any sector would like. The substitute amendment reforms current law in a way that balances the interests of the various sectors of the patent community and substantially improves the patent system overall. We urge you to support this carefully crafted legislation.

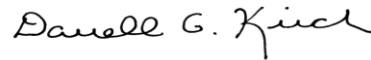
Sincerely,



Robert M. Berdahl  
President  
Association of American Universities



Molly Corbett Broad  
President  
American Council on Education



Darrell G. Kirch  
President and CEO  
Association of American Medical  
Colleges



Peter McPherson  
President  
Association of Public and Land-grant  
Universities



Arundeeep S. Pradhan  
President  
Association of University Technology  
Managers



Anthony P. DeCrappeo  
President  
Council on Governmental Relations

cc: Members of the U.S. Senate