September 9, 2015

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20510

The Honorable John Conyers
Ranking Member
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers:

As members of the life sciences venture capital community, we share grave concerns about H.R. 9, the so-called Innovation Act, because it does not do enough to protect the rights of patent-reliant businesses. Collectively, our venture firms represent approximately $75 billion of investment, and have created and financed innovative biotechnology companies collectively valued in the hundreds of billions of dollars.

A reliable and predictable patent system is a significant factor in our development of an investment thesis around a given company or product pipeline, which ultimately guides our decision about where to allocate capital. Perhaps in no other industry is the examination of intellectual property more critical than the biopharmaceutical industry. Most life sciences companies are initially supported by the venture capital community, which helps provide the significant level of funding necessary to innovate and develop new cures and treatments for serious diseases. Without a fair and predictable patent system, investors will not be willing to allocate their resources in expensive and risky biotechnology projects, cutting off the funding necessary to bring a new medicine or treatment to market.

This is why the new administrative patent challenge system known as Inter Partes Review, or IPR, has caused such alarm among our communities. Since the implementation of this process, we have seen a grim situation in which companies are forced into a system where their patents are judged by a new set of rules under which there is no presumption of validity and they can be invalidated far more easily than in a court of law. Indeed, some patents that already have been affirmed by the district courts are being invalidated by IPR. Other patents are being challenged in IPR by hedge funds seeking to manipulate the stocks of small patent-dependent businesses, which are particularly vulnerable to such abuse. IPR is distracting the time and resources of these companies away from focusing on developing their clinical pipelines.

Simply put, the injection of this type of uncertainty into the patent system puts in doubt the future funding of new breakthrough cures and treatments. That is why over 100 different patient advocacy groups have urged Congress to fix this flaw in the patent system. They understand that no matter how groundbreaking an innovation may be, without the guarantee of a strong patent, the risk cannot be justified and therefore the promise will never be fulfilled.

Congress has an opportunity to address the problems in IPR in its consideration of patent reform. Yet so far in the legislative process, it has failed to adequately do so. Ironically, there is a system for patent challenges in the biopharmaceutical sector that has existed for more than 30 years and has worked well – both incentivizing new innovations to address unmet medical needs, while also speeding lower-cost generic drugs to market after a reasonable and predictable period of time. Congress should prevent IPR from undermining this balanced system, which has served patients so well.

Accordingly, if these IPR concerns are not addressed, we urge a NO vote on any patent reform bill brought up for a vote in Congress.

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cc: Members, Senate Committee on the Judiciary

cc: Members, House Committee on the Judiciary