

Inventor Network of the Capitol Area
6501 Inwood Drive
Springfield, VA 22150

March 17, 2008

Senator John F. Kerry
Chairman
Senate Small Business and Entrepreneurship Committee
United States Congress

Dear Chairman Kerry:

We are a group of small business and entrepreneur inventors. We are writing you in your capacity as Chairman of the Senate Small Business and Entrepreneurship Committee about the patent reform bill, S. 1145. Like all well informed small businesses, including now the National Small Business Association, we are in uniform opposition to every provision of S. 1145, all of which would severely disadvantage small businesses and entrepreneurs in terms of drastically increased costs and/or loss of rights.

S. 1145 almost completely favors the special interests of a few giant international corporations like Microsoft, Intel, Cisco, Micron, HP, and others, while also arbitrarily and unfairly burdening American taxpayers with a gigantic **earmark** of over a \$1 billion in patent costs of Citigroup, Bank of America, and other huge banks (for whom we also owe the current credit crisis). This earmark has received no scrutiny whatever in the Judiciary Committee and indeed has no possible justification, but the damning presence in S. 1145 of this outright gift to huge banks provides clear evidence that S. 1145 is a total sellout to the special interests that directly wrote this fraudulent patent "reform".

We specifically are writing you because the Senate Judiciary Committee has denied any meaningful voice whatsoever to small businesses and entrepreneurs in the drafting of S. 1145. We have been entirely shut out of the legislative process up until now. We need your support to keep our rights as inventors from being destroyed.

We believe this legislation is so fundamentally flawed that it is unfixable by piecemeal amendments. At best, it can only be made marginally less destructive. S. 1145 should fail ultimately due to an unusually stark lack of real merit, despite the blatant misrepresentations and outright lies of its legion of well-heeled special interest lobbyists.

But like most other Americans, we increasingly lack confidence that this Congress will necessarily act in the obvious national interest of our country, instead of the narrow self interests of a multitude of well connected lobbyists representing a few giant international corporations, including both former judiciary and small business committee staff, which creates the appearance of serious conflict of interest.

We therefore urgently request that the SB&E Committee propose an amendment to S. 1145 to exempt absolutely Small Entities from all of the provisions of S. 1145.

By “**Small Entities**” we mean the current definition used by the USPTO (generally, all individuals and organizations of fewer than 500 employees). We also believe this definition needs to be codified in the amendment, given the unprecedented latitude that current USPTO management has illegally assumed in patent rulemaking relative to continuations and number of claims, for example.

By **absolute exemption from all provisions of S. 1145** we mean a blanket exemption from every single one. There can be no reasonable exceptions to this complete and total exemption. Each and every S. 1145 provision weakens the U.S. patent system so as to favor giant corporations at the expense of small businesses and entrepreneurs..

The USPTO already maintains a two tiers fee system, so as to keep the U.S. patent system more affordable to Small Entities. Exempting Small Entities from S. 1145 would also appropriately create a two tier system in other areas to allow their survival. Otherwise, Small Entities will be forced out of the U.S. patent system by an unprecedented increase in the cost of U.S. patents ranging from a minimum of a fivefold increase to as much as hundredfold increase (in the worst case but probable scenario of dozens of opposition procedures over the life of any commercially important patent).

For example, only with the Exemption Amendment would defenseless Small Entities continue to be exempt from certain death by an endless cost attack under the completely unfair new Opposition procedure of S. 1145 that is obviously tilted to the complete advantage of big business. S. 1145 provides for a new, unlimited patent opposition procedure that lasts for the life of the patent. This is far worst than the brief Opposition procedures of Europe and Japan, although that much more limited foreign opposition procedure is still enough to generally prevent the existence of small innovative companies, which are a unique feature of America. (And by the way, so much for the supposed goal of the “reformers” to “harmonize” patent systems with Europe and Japan!)

Each of the unlimited number of separate Opposition procedures of S. 1145 can cost \$100,000 or more and therefore can be used repeatedly by one or more infringing big businesses to force a Small Entity to spend a huge amount of cash that it likely does not yet have to defend its patent from an endless multitude of oppositions, year after year after year for the life of the patent. But at the same time the Small Entity has no possibility whatsoever to obtain damages for the infringement under the opposition procedure. Nor can the Small Entity obtain venture capital because the value of its patent asset is under opposition attack, which also precludes the Small Entity from having the time or money to commercially develop the patent.

In other words, the Small Entity can only play defense in a S. 1145 opposition cost attack that keeps it from obtaining any funding or from commercialization its own innovation. The Small Entity cannot win; it can only not lose. In this game, the result is rigged. The big global corporate infringers always win eventually by spending the Small Entity into the ground. A patently unfair process!

In contrast, without the Opposition procedure of S. 1145, Small Entity currently face patent validity challenges only when financially and legally prepared to do so, during litigation against actual infringers, who can actually lose in this forum and be forced to pay damages to the patent holder instead of automatically winning a cost contest. A reasonably balanced and fair process.

To take just one other example, Small Entities tend to operate only in America and would continue under existing U.S. "First to Invent" rules, while large international corporations would be governed by essentially the same "First to File" rules they enjoy in most foreign countries. Each of the two separate rules establishes a definite filing date and the earliest date determines patent ownership, just like the existing process. There is no unusual burden or conflict to this two tiers approach, either specifically here or generally with respect to other S. 1145 provisions.

By means of this crucial Amendment Exempting Small Entities from S. 1145, about 70% of the overall U.S. patent system can still be reformed in the ways judged urgent by large international corporations. But at the same time the small businesses and entrepreneurs are protected from unfair abuse. This balance is critical to the continued economic success of America, since Small Entities own only about 30% of patents but produce nearly all of the critical new breakthrough technologies upon which the U.S. economy has become increasingly dependent. Similarly, because of their critical role in U.S. technology creation, university-based research and development organizations should also be exempt from S. 1145 even if they do not otherwise qualify as Small Entities.

It is imperative that the same very strong U.S. patent system -- which protected Microsoft, Intel, Cisco, Micron, HP, Apple and Google as garage-based startups and enabled them to grow into the giants of today -- is itself protected so that America continues to create such new technologies and whole new industries based on them.

It is a fact these giants have not been threatened in any significant way, financially or otherwise, by the existing U.S. patent system, but few if any small business and entrepreneurs can survive under the provisions of S. 1145. This is a life or death issue for Small Entities and for the U.S. economy in the long term.

The "Bridge to Nowhere" earmark came to symbolize the last Congress, however at least that bridge just wasted taxpayer money and did not go anywhere bad. In contrast, S. 1145 is a long term "Bridge to Economic Ruin" for America. If passed without a critical exemption amendment for Small Entities, S. 1145 will become the same kind of damning symbol for this Congress, and may also become a similar factor in changing the political landscape of the next Congress.

We feel sure that you appreciate that it is the Committee's foremost duty to protect the interests, indeed, in this case the very survival, of the hundred of thousands of

small businesses and entrepreneurs that depend on the U.S. patent system and upon which the future continued unparalleled success of the U.S. economy itself depends.

We hope we can depend on you to ensure our voice does not continue to be ignored.

Sincerely,

Jason Taylor

Jason Taylor

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cc: Small Business and Entrepreneurship Committee Members

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As a **postscript**, we would also like to provide what we hope is a polite wake-up call to you that your own SB&E Committee staff appears to be compromised in its technical ability to evaluate S. 1145 in a fashion that would be unbiased from the point of view of small business and entrepreneurs.

We understand that the SB&E Committee is currently relying for its legal analysis of the effect of S. 1145 on small business and entrepreneurs on the work of a Georgetown Law student whose only business background is as a recent employee of Intel Corporation, which is one of the principal leaders of the Coalition for Patent "Fairness" which drafted S. 1145. At a minimum, we think you would agree that this appears to be a obvious conflict of interest which could easily call into question the validity of important technical advice that you and your committee receive on S. 1145.