Congress of the United States
Washington, DC 20515

May 19, 2005

Chairman Lamar Smith
Subcommittee on Courts, the Internet
and Intellectual Property
B351 Rayburn HOB
Washington, DC 20515

Ranking Member Howard Berman
Subcommittee on Courts, the Internet
and Intellectual Property
2221 Rayburn HOB
Washington, DC 20515

Dear Chairman Smith and Ranking Member Berman,

We are writing to express our strong support for your efforts to draft patent reform legislation in the 109th Congress. The recent hearings you held in the Intellectual Property Subcommittee have shed important light on the issues facing America's patent system. The hearings clearly highlighted the need to revise our patent system in order to maximize our nation's ability to innovate and compete in the global market place.

As members of the New Democrat Coalition (NDC), we have long recognized that innovation is the key to growing our economy and creating the cutting edge jobs of the future. One of our primary goals as policymakers is to advance American technological and economic leadership by fostering an atmosphere of innovation. We believe that patent reform legislation is necessary to help achieve that goal.

The NDC supports your efforts to advance patent reform legislation that will improve the quality of patents issued and provide common sense litigation reform. As you know, over the past decade there has been a large increase in patent litigation. Much of this litigation has been initiated not by competing companies, but by so-called "patent trolls" who accumulate patents not to further innovation and develop new products, but to use patents as litigation tools. For example, the computer hardware and software industry alone is currently facing approximately 300 patent infringement claims. The estimated litigation cost of these matters is over $500 million. This litigation is costly and disruptive, but most importantly it has increasingly has become a drag on American innovation.

As you work to reform our patent system and deter excessive litigation, we urge you to include the following among the many important patent reform items in your legislation:

> 1) Third Party Submission of Prior Art: In order to make the best informed decisions, it is essential that patent examiners are able to get the most accurate and relevant information about the patent application they are reviewing. Allowing third parties to provide such relevant information to the examiners during the patent process would vastly improve the ultimate quality of issue patents.

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2) Injunctions: We believe injunctive relief is an important legal reform element of patent reform and we encourage the Committee to take aim at those who seek to abuse the patent system for profit.

3) Treble Damages: Another key legal reform is addressing the way courts impose treble damages for willful patent infringements. We believe that in the interest of fairness, this legal standard should be revisited. While courts should be able to assess higher damage amounts when a defendant's actions warrant, treble damages should be limited to those cases where intentional or egregious conduct warrants a punitive measure of damages.

4) Apportionment of Damages: We encourage the Committee to address the problem of apportioning damages in cases involving patented components within complex products. Today, complex products such as semiconductors or software programs include thousands of features, many of which are patented. As these products have become more complex, the old methods for determining the value of an infringement have become strained and have led to some unfair results.

The NDC has long supported improving our patents system, including efforts to increase funding for the Patent and Trademark Office. In the 108th Congress, the NDC key voted the passage of H.R. 1561 to achieve that goal. We believe that legislation was an important first step in improving America's patent system. We now look forward to working with you on the current patent reform legislation to complete that effort.

Sincerely,

Rep. Adam Smith

Rep. Ellen Tauscher

Rep. Ron Kind

Rep. Artur Davis

Rep. Jay Inslee

Rep. Joseph Crowley

Rep. Jim Moran

Rep. Rick Larsen

Rep. Ben Chandler

Rep. Jim Davis

Rep. Eliot Engel

Rep. Gregory Meeks

Rep. John Larson

Rep. Melissa Bean