October 13, 2009

The Honorable John Conyers
Chairman, House Judiciary Committee
United States House of Representatives
Washington, DC 20515

Dear Congressman Conyers:

Stop Patent Piracy: Opposition to The Patent Reform Act of 2009

Without equal, America's patent system is as uniquely American as humankind's *greatest invention*, our beloved Democracy. For the second time in the past two years, this *proud* pro se American inventor is exasperated to see the Congress *retroactively* undermine inventor rights. The Founders singled out two forms of employment in The Constitution, Article 1 – The Legislative Branch, Section 8 – Powers of Congress: "To promote the Progress of Science and useful Arts, by securing for limited Times to *Authors and Inventors the exclusive Right to their respective Writings and Discoveries*." Yet, the Congress is considering legislation fatal to those who create over 40% of high technology jobs – small business. Surely authors should not be limited to five (5) books, nor Legislators to five (5) votes as advocated under the now-abandoned Final Rules. Indeed, what five (5) inventions would the non-practicing entity known to our proud heritage as Thomas Edison have been entitled -- that he *did not Manufacture and was not First To File*?

Lacking an *iota* of evidence, proponents of The Patent Reform Act of 2009 (HR 1260 & S. 515) will *irreparably* damage our *collective* intellectual property. I strongly urge the Congress to consider the actions of core proponents of this shameful legislation: namely, massive lay-offs for American workers & innovation shifted overseas. Chief Judge Paul Michel of the Court of Appeals for the Federal Circuit, in his prepared "A Strong Patent System" (January 28, 2009), persuasively conveyed the heart of this harmful effort:

> In the final analysis, however, fixing problems perceived as unduly hindering defense of suits by 24 companies cannot rationally wag the dog of the system on which all 100,000 companies, including the Fortune 500, depend. Let's find solutions to the real problems that will ameliorate them without hurting the legitimate interests of innumerable other companies and industries. I believe we can do so if we all engage one another in responsible, candid dialogue that avoids rhetoric and exaggeration and focuses on facts.

Proponents of patent reform *have lobbied opinion as fact*. The USPTO Annual Reports, Federal Judicial Statistics reports: "[T]here 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." A private sector study (PriceWaterhouseCoopers' 2008 Patent Litigation Study) concurs: "[T]here is no explosion in patent damages awards."

Americans understand the importance the Founders' placed on a Society enriched by the free flow of ideas competing for the attentions of the day. Patents are unique in enabling disclosure of innovation in exchange for limited protections inherent to economic success. This Great Nation

deserves better. In fact, even *before* The Constitution was ratified, twelve States had already determined the rights of inventors to be inviolate. One State preamble read, in part:

> As the principal Encouragement such Persons can have to make great and beneficial Exertions of this Nature must exist in the legal Security of the Fruits of their Study and Industry to themselves; and as such Security is one of the natural Rights of all Men, *there being no* P*roperty more peculiarly a* M*an's own than that which is produced by the* L*abour of his* mind.

With all due respect, I urge you, the Congress, not to strengthen the hand of I*nfringers*! Of my thirty-three patents (including four recent allowances & a European patent), several embody foundational techniques for copyright protection. Unselfishly, these inventions should not be accorded any value less than the copyrights being protected by my patented inventions. Frankly, *a patent for the next data security process* is more invaluable to these United States than a copyright on the movie *telling the story of that process*. This is not a battle between industries: it is a war on American entrepreneurialism. Indeed, the highly unpredictable outcomes of costly patent litigation is emblematic of a last ditch effort *to enforce the* I*ndividual rights of* E*ntrepreneurs of thought*.

Reasonably stated, if we knew what would succeed in *the* marketplace we could simply *assign prices* to patents, akin to old Soviet *fixed-pricing policy.* I*nvisible* H*and not needed*. C*ompetition not required*. To essentially eliminate the strongest incentive to those who invent today what is bought and sold tomorrow *is simply* un-American. The Patent Reform Act of 2009 (HR 1260 & S. 515) offer *no* benefit to Society as has been empirically proven time and again. American inventors should never be taken for granted under illogical notions of "harmonization." Our job creators are under attack: reject poor innovation policy embodied in these inherently flawed bills.

Yours Faithfully,

/Scott Moskowitz/

Scott Moskowitz
Founder & CEO
Blue Spike, Inc.