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Monday, June 13, 2011

The Honorable John A. Boehner  
Speaker, U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Speaker,

I write to you in the interest of the fact that all net new jobs since 1980 have been created by companies less than 5 years old. With that one fact in mind please consider the following:

As innovators, investors, and entrepreneurs, we urge you to delay consideration of H.R. 1249, The America Invents Act, until Congress has the opportunity to fully understand the potentially devastating effects that this legislation will have on start-ups, independent inventors, entrepreneurs and the many angel and venture investors who invest in them.

Despite the good intention of reducing a backlog of more than 700,000 patent applications awaiting examination, the proposed legislation is fraught with serious consequences, many of which would stifle innovation, increase expenses for start-ups, increase the risk of being a startup, increase a backlog, make it harder for early stage companies to raise capital and will ultimately cost jobs instead of creating them.

Our three primary concerns:

- Proposal to change from "first-to-invent" to "first-to-file" system.
  - A "first-to-file" system favors larger firms with well-established internal patenting procedures, patent committees and in-house attorneys over small business inventors.
  - Increases the cost for start-ups as it forces investor dollars to be used to file patents instead of building a company and creating jobs. Currently, logbooks serve as proof of prior art.
- Effective elimination of grace period.
  - HR 1249 will hurt an integral part of a start-up's ability to launch a product and validate its market before investing in the expensive patent process.
- Extension of post grant review.
  - Provides additional tools for a well-funded infringer to maximize its leverage against a startup owning patented technology.
  - Increases the costs of post-grant opposition with expanded discovery and multiple oppositions, and reduces the likelihood that a start-up's patent infringement suit will be heard in federal court before the start-up's financial resources are exhausted in the opposition.
  - Increases risk for early investors who take the first risks.

There are changes that need to be made to our 220 year-old patent system to bring it into the 21<sup>st</sup> Century, but unfortunately this bill fails to address those issues. The cumulative effects of H.R.1249 will be to create uncertainty



among the very groups that are expected to lead the US back to prosperity. And instead, this has potential to amend and transforms our system into one that favors large corporations instead of small innovators. I know you are quite aware of the fact that small companies tend not to be on the radar screen for most legislators because they cannot afford the lobbyists and advocates that help communicate the issues. And, I am sure you are aware that large corporations focus on productivity with fewer employees, while small companies focus on growing with more employees, from 10 employees to 100 employees to 1000 employees. This is why all net new jobs since 1980 have come from companies less than 5 years old, consequently, a primary source of net new tax revenue for the U.S. government.

Please protect American entrepreneurs, start-up companies, innovators and the uniquely American idea that anyone can invent a better mousetrap. Please delay consideration of H.R.1249.

Sincerely,

*Catherine V Mott*

Catherine V. Mott  
Founder, BlueTree Allied Angels  
Board Chairman, Angel Capital Association