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## United States Senate

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March 3, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
224 Senate Dirksen Office Building  
Washington, D.C. 20510

Dear Chairman Leahy:

I write to commend you on the bicameral, bipartisan introduction of the Patent Reform Act of 2009. I believe that it is important to update our nation's patent system to ensure patent quality and preserve property rights in the inventions that drive our economy. Over the past several years, you and I, along with many others, have been deeply involved in trying to work through the contested issues on patent reform. Although we were unable to come to an agreement last April, I am hopeful that we will achieve a widely-accepted bill this year. To that end, I ask that you take the time necessary to address outstanding concerns of the stakeholders.

I appreciate your commitment to airing differing viewpoints and building the legislative record by holding a hearing on both the bill you have introduced and recent court decisions on patent issues. The Supreme Court and Court of Appeals for the Federal Circuit have issued a number of significant patent decisions over the past two years and I believe that the legislative process will benefit from examining the impact of these decisions.

Given the symbiotic relationship between the judicial and legislative branches with regard to changes to the patent system, I further ask that the bill not be placed on the Executive Business Agenda until late May, after the Court of Appeals for the Federal Circuit has the opportunity to hear argument in *Lucent Technologies, Inc. v. Gateway, Inc.* The court may consider issues related to the damages debate; specifically the scope of the "entire market value" rule when assessing damages. This issue was very contentious as we worked on the bill last year, and I believe that oral argument has the potential to facilitate a compromise or clarify the applicability of damages theories in various contexts.

Another consideration is that the Obama Administration has yet to nominate an Under Secretary of Commerce and U.S. Patent and Trademark Office Director. This person will have a

significant role in implementing any patent reform legislation and we could benefit from hearing the views of the future Director before we send a bill to the floor.

I know that you share my desire to ensure that the reported bill reflects a widely-accepted compromise, particularly with respect to the critical issue of damages. I look forward to working with you on this important legislation.

Sincerely,



Arlen Specter

cc: Senator Orrin Hatch