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The Honorable Chris Coons
United States Senate
1105 North Market Street
Suite 100
Wilmington, DE 19801-1233

Dear Senator Coons,

Thank you very much for your leadership and balance on patent reform. My name is Phil Hartstein, and I am President & CEO of Finjan Holdings, Inc., a NASDAQ (FNJN) traded cybersecurity technology licensing company headquartered in Silicon Valley. I am also an inventor and engineer who is the named inventor on more than two-dozen patents and applications for patents.

The STRONG Patents Act of 2015 rightly addresses the Patent Trial and Appeal Board (PTAB) litigation abuses, among other patent enforcement abuses. Now that we have seen the performance of the patent validity dispute system of Inter Partes Reviews over the past few years, it is useful and timely to consider improvements since the enactment of the America Invents Act of 2011. Moreover, The Innovation Act of 2015, H.R.9 also addresses abuses and focuses on pre-litigation activities and courtroom conduct.

There is no question that abusive patent enforcement practices exist, including in the courts and at the USPTO. Finjan supports some reforms to address such abusive practices, including certain positive ways to discourage abusive conduct. While there is a role for punishment for bad behavior in forging effective law and policy, we believe that effective patent reform must also include provisions that encourage ethical patent enforcement practices. At the same time, law and policy must still reinforce the original intent of the patent system itself. Too much stick and not enough carrot is a bad combination for fostering innovation or growing our economy.

Last month, Finjan began distributing a proposal and a Toolkit on Capitol Hill for encouraging good behavior and promoting ethical patent licensing. A copy is enclosed for your convenience, and our materials are also available on our website:

<http://www.finjan.com/intellectual-property/innovation-vs-reform>.

This ethical patent licensing approach as described in the Toolkit and Executive Summary comes from what Finjan does every day to compete in the marketplace. Finjan has publicly committed itself to best practices in patent licensing, which also extends into enforcement. We made our business practices and core values available on our website in March of last year. Our team actively urges other companies and inventors to adopt our or similar practices when enforcing their patent rights.

technologies, which Finjan developed internally and patented through the USPTO. Our patented technologies proactively detect cyber threats by identifying patterns and behavior of online viruses and other malicious code instead of relying solely on lists of existing or known devious code (a.k.a. “signatures”).

To reinforce our commitment to best practices in licensing, I serve in a leadership role for a Pilot Program led by the Licensing Executive Society (LES), a long-established nonprofit organization representing thousands of licensing professionals in the US and around the world. At LES, Finjan is developing both standards for patent licensing with companies while also working to define a minimum set of behavioral requirements for any patent owner considering licensing or enforcing their patented technologies. LES has already proved its leadership in other successful programs such as the Certified Licensing Professional (CLP) program for individuals in the licensing space; this includes both testing and accreditation for licensing professionals. Compliance with LES-proposed standards will serve as an independent assurance to people and the market that they are dealing with ethical businesses.

Twenty years ago, our founder and lead inventor, Shlomo Touboul, responded to a contest by Sun Microsystems to create applications that used its then-new Java programming language. Java’s promise was to enable programming that when written once would run anywhere on the open Internet. Shlomo recognized that while powerful and disruptive, the advent of Java programming exposed computers to a host of security weaknesses that had to be contained to prevent unknown attacks. Turning his focus on finding solutions to protect against these new weaknesses, Shlomo chose to name his new cybersecurity company “Finjan,” which is a time-tested vessel spanning many cultures for containing hot coffee. Just as a finjan can safely contain and serve hot coffee, Finjan’s technologies identify and contain harmful code thereby protecting the data and other information on computers running Java.

We all read about malicious software code, cyber theft, and terrorism in the news these days, and that more inventions are needed to address the increasing cybersecurity threats. The U.S. Defense Department’s advanced research agency recognizes this need for more innovation. The DOD is spending more time in Silicon Valley and elsewhere in the startup community to learn about new technologies and find the “game changers” that can provide a leap ahead.

Last month I was honored to attend the President’s cybersecurity summit at Stanford University. The President’s Cybersecurity Initiative announced at the summit is timely, and his call for the private cybersecurity community to join forces to create more protections is sensible. Even today, as a public company, the revenues Finjan generates from licensing our patented technologies is returned back to our original investors. What is more, we continue to invest our proceeds back into the cybersecurity ecosystem to create innovations, job opportunities, and economic growth. This commitment to re-invest creates competitive advantages here in the US and extends abroad. Two years ago, we announced a partnership with Jerusalem Venture Partners, which is one of the world’s largest venture capital firms. Later this month, I will be visiting Israel and will participate in a JVP event that will showcase cybersecurity start-ups that were launched because of investments from firms such as Finjan.

Finjan and I would like to work with you and your office to create a proposal in the patent reform legislation that encourages good behavior and promotes ethical patent licensing in both PTAB litigation as well as court litigation. We are willing and able to meet with your team in Washington, D.C. and would be delighted to host you at our Silicon Valley headquarters in East Palo Alto, California.

In the meantime, please let me know whom in your office I may speak with to discuss the STRONG Patents Act and Finjan's practices and perspectives on reform.

Sincerely,

P.P. Julie Mar-Spinola
Phil Hartstein

cc: (w/ enclosure)

The Honorable Dick Durbin, United States Senate

The Honorable Mazie Hirono, United States Senate