

June 11, 2015

The Honorable Bob Goodlatte
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member, House Judiciary Committee
B-351 Rayburn House Office Building
Washington, DC 20515

Chairman Goodlatte and Ranking Member Conyers,

I write today on behalf of ACT | The App Association and the more than 5,000 mobile app and software companies we represent to oppose expansion of the Transitional Program for Covered Business Method Patents (CBM Program).

The app industry has grown into an \$120 billion industry, with small app companies producing more than three fourths of the top apps.¹ Patents are an important part of that success, as app companies own patents, license patents, and build apps that run on patented technology. These companies rely on the patent system to protect innovation and recoup investment, and their businesses grow around a consistent, reliable patent system.

The CBM Program was created as a *narrow* and *temporary* measure to deal with financial services patents, a very specific type of patent. While the goal of the Innovation Act is patent litigation reform, new proposals to extend the program beyond what was intended under the America Invents Act (AIA) would weaken the patent system itself and devalue the patents upon which app companies rely. The patent system is designed to give an owner confidence in the patent they have been issued, with a limited time to challenge that patent at the USPTO once it has been granted. If a specific group of patents are open to continuous challenge at the USPTO, it reduces the value of those patents and the incentive to innovate.

Since the passage of the AIA, Supreme Court rulings and changes at the USPTO have made the expansion of the CBM Program unnecessary. The Supreme Court, in its *Alice* decision, has provided clearer rules for evaluating Section 101 challenges to business method patents. And the USPTO has provided administrative review procedures which are proving effective at challenging overly-broad patents without weakening the patent system.

The best way to eliminate costs associated with litigation of bad patents is to prevent bad patents from being granted. The time and money the USPTO would spend around an extension of the CBM Program

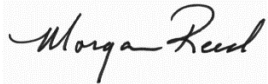
¹ Jonathan Godfrey and Courtney Bernard, "Inside the App Economy 2014" ACT | The App Association (Oct 27, 2014) available at <http://actonline.org/2014/10/report-state-of-the-app-economy-2014/>.

would be better spent improving prior art databases, hiring patent examiners, and providing better examiner training.

We appreciate and support the Innovation Act and its goal of improving the patent system but an expansion of the CBM Program would not achieve that goal. Expansion of the CBM Program would disrupt the patent system itself without fixing current issues with patent litigation. Instead, reforms such as fee shifting and transparency in discovery will better address the problems associated with patent litigation without harming innovation.

Thank you for the opportunity to share our views and we look forward to working with you as this important piece of legislation moves forward.

Sincerely,



Morgan Reed
Executive Director