

Eric H. Holder, Jr.  
Attorney General of the United States

Neal K. Katyal  
Acting Solicitor General of the United States

U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001  
*Via facsimile*

**Re:** *Microsoft Corp. v. i4i L.P. and Infrastructures for Information Inc.*, pending in the United States Supreme Court, No. 10-290

*Washington, D.C., Dec. 22, 2010*

Dear Attorney General Holder,  
Dear Acting Solicitor General Katyal:

On behalf of the 171 undersigned businesses, research institutions and organizations representing American innovation from all 50 states and the District of Columbia, we are writing concerning the pending consideration of the *Microsoft v. i4i* appeal in the United States Supreme Court. We are greatly concerned that a reversal of the lower court's decision in this case could seriously weaken the presumption of validity that attaches to millions of patents in force in the United States today, thereby undermining longstanding investment-backed reliance interests that are critical for domestic job creation and economic growth, and for U.S. technological leadership internationally.

The U.S. patent system is the strongest in the world. It promotes innovation by facilitating the investment necessary for small businesses to form and grow, and for more established businesses to continue competing and thriving in an increasingly competitive global marketplace. Our patent system helps ensure that the United States can continue to reap the benefit of innovation and advances in technology, which creates jobs and growth opportunities in every state and every sector of our economy.

Private investment in innovation, however, is predicated on the ability of businesses to rely on the strength and presumed validity of issued patents for product development, partnering, and licensing decisions. The public, likewise, has an expectation that patents that were examined and granted by the U.S. Patent and Trademark Office confer valid rights that should be respected and on which it can rely. Accordingly, courts have required since long before the enactment of the 1952 Patent Act that those who seek to challenge a patent before a lay jury or generalist judge must carry a heightened burden of proof, under which the facts underlying the validity challenge must be proved to a high degree of probability, by "clear and convincing evidence."

Permitting infringers to invalidate patents on a lower standard of evidence, as is now proposed in the *Microsoft v. i4i* case, could thus frustrate decades of settled expectations under which large investments were made in reliance on patents that were believed to carry a strong presumption of validity. Shifting the law to a weaker presumption of validity could also deeply affect the prospective investment and product development decisions of innovative businesses, affect public-private technology transfer, and profoundly change the behavior of patent applicants and litigants.

We believe this issue to be of critical importance for domestic innovation, job creation, and the Nation's technological leadership internationally. Accordingly, we respectfully request you to carefully consider these implications as you develop any position that the United States Government may take on this important Supreme Court appeal. We also would urge you to seek input from a wide range of stakeholders across the U.S. economy and from within the U.S. Government to ensure that any such position will help preserve and promote innovation across the broad spectrum of the American economy.

We thank you for considering our views on this crucial matter, and we look forward to working with you in this regard.

Respectfully submitted,

**3M Company**  
*St. Paul, MN*

**Ace Vision Group Inc.**  
*Cuyahoga Falls, OH*

**Acorda Therapeutics Inc.**  
*Hawthorne, NY*

**Acorn Cardiovascular**  
*New Brighton, MN*

**Advanced BioHealing**  
*Westport, CT*

**Alkermes**  
*Waltham, MA*

**Allergan Inc.**  
*Irvine, CA*

**Allvivo Vascular Inc.**  
*Lake Forest, CA*

**Amgen Inc.**  
*Thousand Oaks, CA*

**Amylin Pharmaceuticals Inc.**  
*San Diego, CA*

**Antigenics**  
*Lexington, MA*

**APJeT Inc.**  
*Santa Fe, NM*

**Apnex Medical Inc.**  
*St. Paul, MN*

**ArborGen**  
*Charleston, SC*

**Articulinx**  
*Cupertino, CA*

**Aspiration Innovation Inc.**  
*Fort Collins, CO*

**Augme Technologies Inc.**  
*New York, NY*

**B&R Plastics Inc.**  
*Denver, CO*

**BASF**  
*Florham Park, NJ*

**Bavarian Nordic**  
*Washington, DC*

**Bayer CropScience**  
*Morristown, NJ*

**Bayer HealthCare**  
*Morristown, NJ*

**BIOCOM**  
*San Diego, CA*

**BioForward**  
*Madison, WI*

**BioMarin**  
*Novato, CA*

**Biomerix Corporation**  
*Fremont, CA*

**Biotechnology Industry Organization**  
*Washington, DC*

**BlueCava Inc.**  
*Irvine, CA*

**BP America Inc.**  
*Houston, TX*

**Brain Basket, LLC**  
*Boulder, CO*

**Calibra Medical, Inc.**  
*Redwood City, CA*

**California Healthcare Institute**  
*La Jolla, CA*

**Calypso Medical**  
*Seattle, WA*

**Cardiovascular Systems Inc**  
*Saint Paul, MN*

**Cargill Inc.**  
*Minneapolis, MN*

**Celleration Inc.**  
*Eden Prairie, MN*

**Ceres**  
*Thousand Oaks, CA*

**Cerevast Therapeutics Inc.**  
*Redmond, WA*

**CHF Solutions Inc.**  
*Brooklyn Park, MN*

**Chimerix Inc.**  
*Durham, NC*

**Columbia Medical Manufacturing LLC**  
*Santa Fe Springs, CA*

**Computrol Inc.**  
*Golden, CO*

**Conatus Pharmaceuticals Inc.**  
*San Diego, CA*

**Conceptus Inc.**  
*Mountain View, CA*

**Corning Incorporated**  
*Corning, NY*

**Curo Medical Inc.**  
*Saratoga, CA*

**Cyberonics**  
*Houston, TX*

**Cygnus Broadband**  
*San Diego, CA*

**Delcath Systems Inc.**  
*New York, NY*

**Design Mentor Inc.**  
*Pelham, NH*

**Dolby Laboratories Inc.**  
*San Francisco, CA*

**DuPont**  
*Wilmington, DE*

**Dynatronics**  
*Salt Lake City, UT*

**Eisai Inc.**  
*Teaneck, N.J*

**Element One Inc.**  
*Boulder, CO*

**Eli Lilly and Co.**  
*Indianapolis, IN*

**Emerson Analytics, LLC**  
*Fort Collins, CO*

**Essentialink.com, LLC**  
*Westminster, CO*

**Essex Woodlands**  
*Palo Alto, CA*

**ExploraMed Development LLC**  
*Mountain View, CA*

**Fallbrook Technologies Inc.**  
*San Diego, CA*

**Financial Healthcare Systems LLC**  
*Greenwood Village, CO*

**ForSight Labs LLC**  
*Menlo Park, CA*

**ForSight VISION4 Inc.**  
*Menlo Park, CA*

**Forward Ventures**  
*San Diego, CA*

**Front Range Oil and Gas LLC**  
*Golden, CO*

**Genentech Inc.**  
*San Francisco, CA*

**Gen-Probe Inc.**  
*San Diego, CA*

**Genzyme Corporation**  
*Cambridge, MA*

**Geron Corporation**  
*Menlo Park, CA*

**GlaxoSmithKline**  
*Research Triangle Park, NC*

**GlycoMimetics Inc.**  
*Gaithersburg, MD*

**Greatbatch**  
*Clarence, NY*

**Heritage Woods Inc.**  
*Alto, MI*

**High Peaks Materials LLC**  
*Parker, CO*

**High Plains Well Service LLC**  
*Centennial, CO*

**Human Genome Sciences**  
*Rockville, MD*

**HUNT Dimming**  
*Fort Collins, CO*

**Hydra Biosciences**  
*Cambridge, MA*

**Ikaria**  
*Clinton, NJ*

**Illinois Tool Works Inc.**

*Glenview, IL*

**ImmunoGen Inc.**

*Waltham, MA*

**Inovadeas LLLP**

*Fort Collins, CO*

**Inovio Pharmaceuticals Inc.**

*Blue Bell, PA*

**InterDigital Communications LLC**

*King of Prussia, PA*

**Isis Pharmaceuticals Inc.**

*Carlsbad, CA*

**Johnson & Johnson**

*New Brunswick, NJ*

**Keeton Industries**

*Wellington, CO*

**Kolltan Pharmaceuticals Inc.**

*New Haven, CT*

**L&T Riser LLC**

*Parker, CO*

**LAAX Inc.**

*Livermore, CA*

**Lateral Reservoir Stimulation LLC**

*Centennial, CO*

**LED Up Enterprises, Inc.**

*Agoura Hills, CA*

**Life Technologies**

*Carlsbad, CA*

**LifeScience Alley**

*St. Louis Park, MN*

**LigoCyte Pharmaceuticals Inc.**

*Bozeman, MT*

**LiquiLock LLC**

*Arvada, CO*

**Luminous Medical Inc.**

*Carlsbad, CA*

**Mardil Medical Inc.**

*Orono, MN*

**Massachusetts Medical Device Industry Council (MassMEDIC)**

*Boston, MA*

**Medical Device Manufacturers Association (MDMA)**

*Washington, DC*

**MedTech**

*Syracuse, NY*

**MedVenture Associates**

*Emeryville, CA*

**Merck & Co Inc.**

*Whitehouse Station, NJ*

**Merial**

*Duluth, GA*

**Metabolex, Inc.**

*Hayward, CA*

**Momenta Pharmaceuticals Inc.**

*Cambridge, MA*

**Monsanto**

*St. Louis, MO*

**NeoTract® Inc.**

*Pleasanton, CA*

**Neovista Inc.**

*Newark, CA*

**Neuro Resource Group Inc.**

*Plano, TX*

**Neuronetics Inc.**  
*Malvern, PA*

**NeuroPace Inc.**  
*Mountain View, CA*

**Norris Capital Inc.**  
*Hanson, MA*

**North Carolina Biosciences  
Organization**  
*Research Triangle Park, NC*

**OncoMed Pharmaceuticals Inc.**  
*Redwood City, CA*

**Optimum Performance Solutions LLC,  
dba AcuityZ**  
*Topeka, KS*

**Paracor Medical Inc.**  
*Sunnyvale, CA*

**ParkerVision Inc.**  
*Jacksonville, FL*

**PE Fusion**  
*Fort Collins, CO*

**Pfizer Inc.**  
*New York, NY*

**PhRMA**  
*Washington, DC*

**Pioneer Hi-Bred**  
*Johnston, IA*

**Pivot Medical Inc.**  
*Sunnyvale, CA*

**POMOCO LLC**  
*Centennial, CO*

**Portaero Inc.**  
*Cupertino, CA*

**Procter & Gamble**  
*Cincinnati, OH*

**PTC Therapeutics**  
*South Plainfield, NJ*

**Research Corporation Technologies**  
*Tucson, AZ*

**ResMed Corporation**  
*San Diego, CA*

**Revivicor Inc.**  
*Blacksburg, VA*

**Roche (Hoffmann-La Roche Inc.)**  
*San Francisco, CA*

**Sanofi-Aventis US**  
*Bridgewater, NJ*

**Silere Medical Technology Inc.**  
*Kirkland, WA*

**SoftRay Inc.**  
*Laramie, WY*

**SoSound Solutions LLC**  
*Louisville, CO*

**Spiracur Inc.**  
*Sunnyvale, CA*

**SuturePro Technologies Inc.**  
*Menlo Park, CA*

**SuVolta, Inc.**  
*Los Gatos, CA*

**Swan Valley Medical Inc.**  
*Bigfork, MT*

**Sysdyne Corporation**  
*Minneapolis, MN*

**Tactile Systems Technology Inc.**  
*Minneapolis, MN*

**Tarsus Medical Inc.**  
*Mountain View, CA*

**Tegracore LLC**  
*Ft. Collins, CO*

**Temple Construction**  
*Fort Collins, CO*

**Terra Moya Aqua Inc.**  
*Cheyenne, WY*

**Tessera Inc.**  
*San Jose, CA*

**Tethys Bioscience Inc.**  
*Emeryville, CA*

**The Foundry LLC**  
*Menlo Park, CA*

**The Health Industry Council**  
*Irving, TX*

**The Innovation Factory**  
*Duluth, GA*

**The Regents of the University of California**  
*Oakland, CA*

**The Stella Group Ltd.**  
*Washington, DC*

**Thunder Basin Environmental  
Consulting Inc.**  
*Buffalo, WY*

**TYRX Inc.**  
*Monmouth Junction, NJ*

**Unicover Corporation**  
*Cheyenne, WY*

**Uniloc USA Inc.**  
*Irvine, CA*

**University of Kentucky**  
*Lexington, KY*

**Urovalve Inc.**  
*Newark, NJ*

**USG Corporation**  
*Chicago, IL*

**Valeritas Inc.**  
*Bridgewater, NJ*

**Ventus Medical Inc.**  
*Belmont, CA*

**Vertex Pharmaceuticals**  
*Cambridge, MA*

**Vibrynt Inc.**  
*Redwood City, CA*

**VisionCare Ophthalmic Technologies**  
*Saratoga, CA*

**Volterra Semiconductor Corporation**  
*Fremont, CA*

**Walker Manufacturing Company**  
*Fort Collins, CO*

**Wellington Operating Company**  
*Centennial, CO*

**Wellington Water Works LLC**  
*Centennial, CO*

**Wisconsin Alumni Research  
Foundation**  
*Madison, WI*

**ZOLL Medical Corporation**  
*Chelmsford, MA*