

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

September 17, 2010

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, the U.S. Capitol
Washington, D.C. 20510

The Honorable Thad Cochran
Ranking Member, Appropriations Committee
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Leader McConnell and Ranking Member Cochran:


We write to express our vigorous objection to the inclusion of Senator Kohl's patent-settlements bill, S. 369, in the Financial Services and General Government Appropriations bill. S. 369 is squarely within the jurisdiction of the Judiciary Committee. The bill was opposed in the committee by the ranking member and almost all of the committee's Republican members (as well as Senator Specter) for reasons explained in the dissenting views from the bill's committee report. *See* Senate Report 111-123, pp. 18-20.


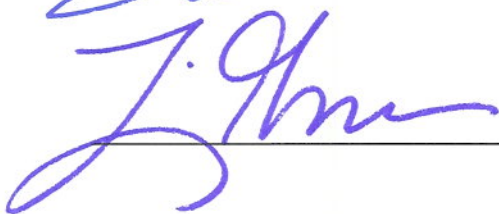
S. 369 is a complex bill that addresses the intersection between antitrust and patent law, the economics and anticipated outcomes of patent infringement lawsuits, and the factors that are legitimately considered when settling such suits. We believe that the reported bill gives excessive power over such settlements to the FTC – a power that the FTC has shown itself in the past to be unable to exercise in a responsible or economically rational manner – and that the bill would do serious violence to the Hatch-Waxman process for the market entry of generic drugs.

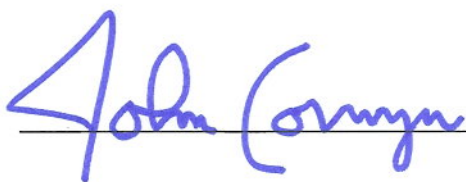
September 17, 2010
Page 2

The inclusion of this bill in an appropriations bill, despite the objection of the ranking member of the Judiciary Committee and other committee members, is a gross breach of Senate custom and of jurisdictional boundaries. We will object to the consideration of any appropriations bill that includes S. 369, and we ask that you make every effort to protect our rights with regard to this matter.

Sincerely,







cc: Senators Collins and Kyl