**Statement of**

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**The Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive Patent Rights (RESTORE) Act of 2024"**

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Chairman Coons, Ranking Member Tillis, and members of the Subcommittee, thank you for inviting me to testify today. My name is Jacob Babcock, and I am the CEO of NuCurrent, a Chicago-based technology company specializing in wireless power and data transfer solutions. I also serve on the Board of mHUB, a leading Chicago-based innovation incubator that supports entrepreneurs and SMB manufacturers who create physical products to solve real-world challenges. Since launching in 2017, the mHUB community has generated more than $920M in revenue, launched more than 1,000 products, created over 2,600 jobs, and raised over $1.7B in capital.

IP is the lifeblood of my company and the innovators I support at mHUB and through my venture investments. It is the tool that allows for risk taking, big bets and breakthrough tech.

America's innovation story reflects bold ideas, risk-takers, and the belief that hard work and ingenuity can change the world. Our intellectual property system has long served as the cornerstone of that success, ensuring that innovators could take risks knowing their ideas would be protected. Today, however, our IP system is rotting. It suffers from imbalances that reward exploitation and infringement over invention and entrepreneurship, stifling the creativity that has

powered our economy and global leadership. There is a group of mega tech companies that have effectively lobbied for the past decade to weaken rights of patent holders. By seeking to weaken the patent system and the rights of innovators, these established players are effectively pulling up the ladder behind them after they have already reached the top. This is a pivotal moment: if we fail to act, we risk losing our competitive edge – innovators and dreamers. If we seize this opportunity, however, we can ensure that America remains the global leader in innovation and prosperity for generations to come.

**A System Built Against Innovators: How Today's Patent Landscape Rewards Infringers**

NuCurrent is a venture-backed growth company founded on the idea that we can develop and perfect specific technological building blocks and tools, then partner with others to adapt that technology for their products. We focus on inductive power transfer technology to transmit power and data to electronic devices. If you have ever charged your smartphone with Qi technology or an electric toothbrush on a stand, you've used a version of this approach. Our inventions contribute to and build upon existing standards—for example, enabling you to charge smartwatches while you're still wearing them. We stand out as a tech-transfer licensor: we specialize in deep research and invention that we transfer to customers to enhance their product differentiation through collaborative engineering. This model is a strength of the U.S. innovation system that strong patent protections can enhance. We have succeeded by working with companies that value what we bring and have clear, targeted plans to leverage our innovation for their commercial success.

At NuCurrent, we have filed over 400 patents and partnered with industry leaders like Amphenol, Honeywell, HP, Logitech, Zebra and dozens of others to bring transformative products to market. These companies demonstrate how to handle innovation correctly: grow their business, develop differentiated products, and nurture innovation. Our model relies on sharing our technology through partnerships. We don't just license patents; we deliver cutting-edge engineering and collaborative R&D that accelerates the success of dozens of product companies. Understand that this model is not unique to NuCurrent. Hundreds of other highly innovative R&D-based companies provide critical technical solutions that others then commercialize. This development and tech-transfer process—whether from university labs or corporate labs like NuCurrent—originated in the U.S. and remains a key differentiator of our competitive advantage.

Patents are critical to this innovation process. Without them, we cannot protect the rights of our licensing partners from their competitors that copycat and steal to get ahead. For business models like ours to thrive, the intellectual property system must function properly. Our work demands significant risk capital, a highly talented workforce, and years of patience before a technology reaches the market. If we cannot rely on the U.S. patent system for confidence and security, our model will fail. Should it fail, not only will innovators like us lose, but the American economy, American jobs, and our customers' competitive standing will suffer.

Unfortunately, legal weaknesses in the current patent system directly threaten our "technology for hire" model. Even though patents are supposed to grant inventors exclusive rights to their inventions for a limited time—in exchange for publicly disclosing how their technology works—

that balance was shattered by the 2006 *eBay v. MercExchange* decision, which effectively eliminated equitable relief from patent cases. Since *eBay*, the only realistic remedy available to patent holders is financial and that has dramatically shifted the balance of power in the patent system to mega tech companies with deeper pockets than any companies in the history of mankind. For them, fighting multi-million dollar court cases is a small tax on doing business. In the worst case, they may have to pay a financial penalty years, and sometimes over a decade, after the wrong-doing started. In the meantime, they have probably illegally exploited the technology for massive financial gain while the innovator is scraping together resources to fund the cases. The gross imbalance is so obvious: money and power are magnitudly greater on the side of infringers and they have no time pressure. What is left for the innovator?

**No Urgency, No Fair Play: Lack of Injunctive Relief Undercuts Honest Deal-Making**

Let me give a specific example that impacted my company. One of our patented technologies was stolen and shared by a major Korean OEM, allowing large printed circuit board (PCB) manufacturers in China and Taiwan to freely produce and sell what we had created. This wasn't just theft—it was a systemic failure of the U.S. patent system. Without tools like injunctive relief, we couldn't stop it. Financial remedies arrived years later, after the damage was done. The billions of dollars of value our IP created flowed not to American innovators or workers, but to foreign manufacturers. This is not an isolated case—it's a symptom of a system that no longer provides timely accountability. In this instance, the U.S. patent system essentially forced us to donate our R&D and American IP to aggressive foreign competitors.

I know this Committee has heard from other disruptive U.S. companies with nearly identical stories.

Consider the case of cybersecurity company Centripetal, which faced willful infringement and trade secret theft for over a decade. Although Centripetal proved its patents valid and infringed by Big Tech companies multiple times, it could not secure injunctive relief. During this time, those companies built massive business lines directly competing with Centripetal's innovations.

For U.S. semiconductor memory pioneer Netlist, the history is more recent but equally damaging. Netlist has repeatedly litigated against serial Big Tech infringers, incurring enormous costs and distractions from its core mission of creating cutting-edge computer memory solutions that power everything from social media to AI. Its patents have been challenged dozens of times in coordinated attacks. Netlist has proven their validity and infringement repeatedly, as shown in a November 2024 jury verdict against Samsung. Netlist filed for injunctive relief just last week in a case involving willful infringement of a patent that survived the IPR process and extensive litigation. Yet few expect that an injunction will be granted to halt the ongoing infringement – they rarely are post *eBay*.

NuCurrent's experience, along with those of other disruptive startups, demonstrates how the current system incentivizes "efficient infringement." Large companies calculate that delayed financial penalties won't outweigh the profits they make in the meantime. This dynamic thrives largely because the threat of injunctive relief in patent infringement cases vanished after *eBay* decision.

In the twenty years since *eBay*, the lack of effective injunctive relief has completely altered the U.S. innovation landscape. The patent system itself has created glaring economic asymmetry between startups and entrenched incumbents.

As Professor Kristen Osenga noted in a February 2024 study:

> *"Common sense also tells us that the loss of injunction to stop violations of property rights also devalues property in the marketplace—it is simply worth less given that it offers less protection to its owner. This is a basic idea in economics. The exclusive nature of property is the key to efficient use of assets. Exclusion means an injunction. An injunction is the legal backstop for commercial negotiations—it is the protection that secures to any property owner the freedom to say "no" to an offer to purchase or access one's property. In patent law, an injunction allows a patent owner to walk away from negotiations if the party wishing to use the patented technology is unwilling to pay the asking price. But where an injunction is unlikely to be granted, that third party has little-to-no incentive to negotiate a license and instead may choose the "infringe now, pay later" strategy of predatory infringement."*[6]

I believe it is no coincidence that since the *eBay* decision removed the presumption of injunction after proven infringement, we have seen unprecedented concentration and dominance by a handful of Big Tech companies. It is now structurally impossible to create a viable competitor to them in their core sectors.

This is not ivory tower theory. It is reality. Apple's former patent chief acknowledged this, stating, "Efficient infringement... could almost be viewed as a fiduciary obligation, at least for cash-rich firms that can afford endless litigation." Consider his choice of the term "fiduciary obligation" in that statement. He believes that shareholders could have recourse to litigate against executives if they do not practice efficient infringement because it makes so much economic sense that, if they do not do it, they could be squandering shareholder value.

## Pulling Up the Ladder: How Established Players Prevent the Next Generation of American Innovators

Without tools like injunctive relief, no urgency exists to respect patents. This may be the most insidious flaw facing U.S. innovators and disruptive startups. Companies like NuCurrent end up funding endless litigation and PTAB challenges instead of inventing new technologies, building businesses, and creating jobs. The result is an ecosystem where risk and reward fall out of balance, discouraging participation in areas that drive transformative progress from inventors and investors alike. This reduced participation—from innovators and venture investors—threatens to undermine America's competitive advantage and the culture of innovation that defines us.

I can cite personal experience from the venture world. Consider the 81 Collection, a venture fund I invest in. It formed around a striking disconnect: while 81% of U.S. GDP comes from industries outside traditional "tech" sectors, these critical sectors—manufacturing, construction,

energy, and more—receive less than half of venture capital investment. Digging deeper, the businesses that do receive investment in the other "81% industries" are overwhelmingly only in software. "Hard tech" businesses face a 15:1 funding gap compared to "soft" ones. The reason is clear: with the current decay in the IP system, the return on investment in patent-intensive sectors like energy, healthcare, transportation, and critical infrastructure doesn't justify the risk. But can anyone here tell constituents that investing in these sectors isn't critical to our future? This failure has real consequences—for individual companies and for the broader industries that sustain our economy and way of life.

At mHUB, I've seen this imbalance up close. I want to thank Senator Durbin for his leadership and engagement with mHUB, as well as Senator Duckworth for her support of innovation across Illinois. Since its founding, the mHUB community has generated more than $920M in revenue, launched more than 1,000 products, created over 2,600 jobs, and raised over $1.7B in capital. These entrepreneurs are building solutions in advanced manufacturing, medical devices, defense tech and clean energy—areas that require strong IP protections. Yet dozens of entrepreneurs have asked me whether it's worth investing their limited resources to file patents. I feel obligated to be honest: in today's system, their chances of defending those patents are slim, and they are better off using their money elsewhere. Every time I give that advice, I worry we're letting the next big innovation slip away—only for larger companies or foreign competitors to exploit it later. mHUB's success may look like a victory for our innovation economy, but it thrives despite our patent system, not because of it. I envision a future where we combine this entrepreneurial spirit with strong incentives and protections for innovators to drive massive, exceptional progress.

We talk a lot about empowering "little tech" or "young tech" to reinforce America's innovative leadership, revitalize U.S. manufacturing, address national security needs, and avoid new Big Tech monopolies in areas like AI. This premise is absolutely correct, and companies like mine already play a role. However, one of the most important tools any of these younger companies need is a strong patent system. Our future depends on fixing the current rot in the IP system.

We can fix it. The RESTORE Act offers a crucial step toward rebalancing the system. Injunctive relief isn't just a legal mechanism—it sends a signal that America values its innovators and protects their right to succeed. It ensures that stolen technology doesn't embed itself in supply chains or fuel competitors while rightful creators scramble for scraps years later. It also provides the certainty investors need to fund transformative innovation in critical future sectors.

While much of patent law is complex, the RESTORE Act is simple and straightforward. It restores the U.S. patent system to a framework that worked for nearly 200 years before the *eBay* case disrupted fundamental property rights and common sense. This bipartisan, concise bill creates a presumption that if a U.S. court rules that your patent has been infringed, you can have the infringing product removed from the market. This makes sense and restores basic equity. Where else does U.S. law allow a party found guilty of breaking the law to continue doing so? A company found guilty of tax evasion isn't allowed to keep operating. One that willfully violates environmental or labor standards is typically shut down. Yet large multinational companies that willfully infringe intellectual property get to continue building market dominance with no real risk. That is today's reality, and every Big Tech company knows it. They have made it part of

their business strategy. As Apple noted, it is their “fiduciary responsibility” to do so. That is a clear sign of a broken system.

This is our moment. If we take action, we can reaffirm America’s position as the global leader in innovation. If we do nothing, the consequences will ripple across our economy and weaken our global standing. I fully support the RESTORE Act as one solution, but even if it’s not this bill, I urge you to act with urgency. Innovation cannot wait, and neither can America’s future.

Thank you, and I look forward to your questions.