

June 6, 2012

The Honorable David J. Kappos  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

Via email: [Gilda.Lee@uspto.gov](mailto:Gilda.Lee@uspto.gov)

**RE: Comments on Notice of Proposed Rulemaking  
“CPI Adjustment of Patent Fees for Fiscal Year 2013”  
77 Fed. Reg. 28331 (May 14, 2012)**

Dear Under Secretary Kappos:

The American Intellectual Property Law Association (“AIPLA”) is pleased to have the opportunity to present its views with respect to the United States Patent and Trademark Office (the “Office”) Notice of Proposed Rulemaking entitled, “CPI Adjustment of Patent Fees for Fiscal Year 2013,” published in the Federal Register (77 Fed. Reg. 28331) on May 14, 2012 (the “Notice”).

AIPLA is a U.S.-based national bar association with approximately 15,000 members who are primarily lawyers in private and corporate practice, government service, and the academic community. AIPLA represents a diverse spectrum of individuals, companies, and institutions involved directly and indirectly in the practice of patent, trademark, copyright, unfair competition, and trade secret law, as well as other fields of law affecting intellectual property. Our members practice or are otherwise involved in patent law and other intellectual property law in the United States and in jurisdictions throughout the world.

AIPLA supports the proposed CPI Adjustment of Fees for Fiscal Year 2013 as an interim fee increase for the purpose of acting as a bridge to provide resources until the USPTO exercises its fee-setting authority under Section 10 of the Leahy-Smith America Invents Act (“AIA”). We support this “bridging” fee increase in recognition of the transitional nature of the present situation in which the Office is setting fees under Section 10 as well as adjusting fees to reflect changes in the CPI. We would note, however, that the administrative burdens on corporations and patent law firms to adjust their internal systems for paying fees and correctly advising clients of fee increases are not insignificant. For this reason, AIPLA believes that there should be no more than a single fee adjustment annually. This is clearly an attainable goal, and one which will make it easier to build and maintain support among the user community, the public, and the Congress. It would also improve efficiencies for the Office and the user community in adjusting and adapting to changes in the fees.

The proposed CPI adjustment reflects another across-the-board fee increase following the surcharge of fifteen percent on all fees charged or authorized by 35 U.S.C. 41(a), (b), and (d)(1) and by 35 U.S.C. 132(b). There will, of course, be a significant overhaul of fee changes in the coming months when the Office adjusts all fees under Section 10 of the AIA. Particularly in these challenging economic times, these fee increases have been noticed by the user community and have raised concerns from a wide variety of voices. Thus, while having an understanding of the exigencies of the current transitional situation and the fiscal challenges facing the Office, AIPLA believes that, in future years, CPI fee adjustments and Section 10 fee adjustments should be timed so as to avoid having two separate adjustments in the same year. To the extent that any Section 10 fee adjustment and CPI adjustment might not be ripe at the same time, the planned reserve fund should be more than adequate to bridge any resource deficiencies. This approach would allow the user community to more efficiently adapt to such changes and determine how much to budget for fee expenditures in the coming year.

AIPLA does note with some concern that one of the stated bases for the current increase is to meet the strategic goals within the time frame outlined in the FY 2013 President's Budget. As discussed in our comments to the Patent Public Advisory Committee on the "Proposed Patent Fee Schedule," dated February 29, 2012, AIPLA is concerned that some of the time frames both for pendency reduction and for growth of the reserve fund (both identified strategic goals) may be too aggressive and may place too much burden on current applicants, to their detriment and to the detriment of the system as a whole. AIPLA looks forward to the continued exchange on these concepts in the Section 10 fee-setting process as an opportunity to collaboratively consider the appropriate time frames for these strategic goals.

AIPLA appreciates the opportunity to provide these comments and would be pleased to answer any questions they may raise.

Sincerely,

A handwritten signature in black ink that reads "William G. Barber". The signature is written in a cursive style with a long, sweeping underline.

William G. Barber  
AIPLA President