

May 17, 2010

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Room 2138 Rayburn House Office Building  
Washington, D.C. 20515-6216

The Honorable Lamar S. Smith  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Room 2142 Rayburn House Office Building  
Washington, D.C. 20515-6216

Dear Chairman Conyers and Ranking Member Smith:

On behalf of the American Intellectual Property Law Association (AIPLA), I am writing to express our strong opposition to the Patent and Trademark Office Fee Modernization Act of 2010, which for the first time, would give the Director of the U.S. Patent and Trademark Office the authority to set and increase fees, without ensuring that those fees will remain at the Office to improve operations. We readily recognize that the Office is in need of additional resources, but we cannot support giving the Director the authority to raise fees without the assurance that those funds will remain at the Office. Moreover, we support comprehensive patent reform, dealing with this issue and others, rather than the piecemeal approach embodied in this bill.

AIPLA is a national bar association with more than 16,000 members engaged in private and corporate practice, in government service, and in academia. AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent and trademark law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property, and they have a keen interest in a strong and efficient Patent and Trademark Office.

The Congress is very much aware of the challenges facing the USPTO, many of which have been highlighted during the patent reform debate over the last several Congresses. In significant part, the quality and pendency problems confronting the Office are attributable to the prior diversion and use of USPTO fee revenues to fund other government operations. Cumulatively, this diversion resulted in reduced appropriations of more than \$750 million in fees paid by patent and trademark applicants for the processing of their applications. As a result, the USPTO was severely constrained in its ability to hire, train, and retain the number of skilled examiners needed to cope with a significant increase during that same period of patent application filings, resulting in the present backlog that now leaves applications in some critical technology areas pending for as long as four to five years before examination even begins. Steps taken by the Office to address its quality and pendency issues—made possible in large measure by allowing it to receive and use all of its fee revenues—demonstrate the absolute necessity of allowing the Office to continue to retain and use its fee revenues.

While Congress and the Administration recently have permitted the Office to retain essentially all of its user fees for the last several fiscal years, there is nothing to prevent the diversion of user fees in the future. In fact, Director Kappos testified before the House Judiciary Committee on May 5<sup>th</sup> that, under current projections, \$146M to \$232M in user fees will be diverted away from the Office in this

The Honorable John Conyers  
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Page 2

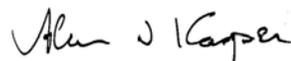
fiscal year if something is not done. It seems counterintuitive to consider legislation giving the Office additional funds with full knowledge that, without further Congressional action, a significant amount of such monies will be diverted from the Office in the current fiscal year.

It will take full, permanent, and continuing funding of the USPTO to overcome the challenges the Office faces. Without some mechanism to ensure that the Office retains its fee revenue, the USPTO has no guarantee of full funding, and perhaps more importantly, has no way to intelligently plan long term to meet the multitude of challenges facing the Office. Given the importance of our intellectual property system as a key economic driver which attracts and protects investment in new technology, our country's innovators, who pay the fees, deserve no less.

The time has come for Congress to once and for all provide the USPTO with the ability to more predictably and intelligently plan its fiscal operation by ending the possibility of fee diversion.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Alan J. Kasper". The signature is written in a cursive style with a large initial "A".

Alan J. Kasper  
President