

June 9, 2011

The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
The Capitol, Room H-232
Washington, DC 20515-6501

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
The Capitol, Room H-204
Washington, DC 20515-6537

RE: AIPLA SUPPORTS SECTION 22 OF H.R. 1249, THE AMERICA INVENTS ACT

Dear Speaker Boehner and Minority Leader Pelosi:

On behalf of the American Intellectual Property Law Association (AIPLA), I am writing to express our strong opposition to any effort to significantly weaken or remove Section 22 of H.R. 1249, the America Invents Act, when that legislation is considered by the House of Representatives. This section, establishing the United States Patent and Trademark Office Public Enterprise Fund, is a critical pillar of the patent reform legislation and is designed to ensure that all the fees paid by the users of the Office will remain at the USPTO to be utilized for its operations, while maintaining significant and appropriate Congressional oversight.

AIPLA is a national bar association with approximately 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.

Over the years, hundreds of millions of dollars in fees paid by patent and trademark applicants for the processing of their applications have not been made available to the Office. In our view, this practice has had a serious negative impact on USPTO operations, and the Office continues to be hampered by an unpredictable funding situation. Two years ago, specific legislation was necessary to avoid furloughs of patent examiners. Last year, despite Emergency Appropriations legislation, approximately \$53 million of user fees was not made available to the Office. This year, without further Congressional action, an estimated \$85–\$100 million will not be made available to the USPTO. As a result, we have seen the Office restrict overtime, postpone the hiring of new examiners, and push back IT and other initiatives designed to make progress on its workload and improve operations. Clearly, a more long-term sustainable funding model is imperative for the USPTO to tackle the challenges it faces.

Additionally, Section 10 of H.R. 1249, as reported, would give the Director of the U.S. Patent and Trademark Office the authority to set and increase fees. While we readily recognize that the Office is in need of additional resources, we cannot support giving the Director the authority to raise fees without the assurance provided by Section 22 that those funds will remain at the Office. Nothing in the legislation inhibits continued Congressional oversight. Moreover, the bill specifically requires the USPTO to submit a report to Congress that summarizes operations for the preceding year, details the operating plan for the agency, describes its long-term modernization plans and progress, and includes the results of the most recent audit. Additionally, the provision requires the Office to notify the House and Senate Appropriations Committees of its annual spending plans. The Director must also submit an annual “business-type” budget for the Fund to the President.

We view the revolving fund provision as key to the overall reform effort. Moreover, we have been one of the most consistent and vocal supporters of patent reform, knowing firsthand how critical it is to our members’ clients and the nation. Unfortunately, given the time and resources we have committed to this effort over the last several years, we must make it clear that, if Section 22 is significantly weakened or removed, we would have to revisit our support for the legislation.

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.

Sincerely,

David W. Hill
AIPLA President