

June 22, 2011

The Honorable Lamar Smith
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

On behalf of the American Intellectual Property Law Association (AIPLA), I am writing to communicate our views on the current state of the Leahy-Smith America Invents Act, H.R. 1249, and in particular to express our strong concern over the amendment to Section 22 as set forth in the Manager's Amendment. We strongly supported Section 22, and while we appreciate the efforts made by you and the House leadership to find a workable compromise, we still have some significant concerns with the revised language.

The language of the Manager's Amendment does appear to direct that user fees in excess of each year's appropriation are to be placed in a sequestered account so that those fees may not be utilized for activities unrelated to the USPTO. This is a long-sought goal of ours and one that will go a long way towards ensuring sustainable funding for the USPTO.

Unfortunately, the language in the amendment does not appear on its face to guarantee that the funds placed in the account will become available for use at the USPTO, most importantly in a reasonable and timely manner. We appreciate the letter from the House Appropriations Committee which makes an effort to address these concerns and we would strongly support further clarification, including through a colloquy during Floor consideration, including addressing the following points:

- Consistent year-on-year language in appropriations bills, in particular addressing reasonable and timely access to all fees by the USPTO,
- Commitment that the USPTO will be funded at least to the level of projected collections as accepted by the Congressional Budget Office,
- Address reasonable and timely access to all fees during periods of continuing resolutions, and
- Commitment that any process for access requiring Congressional or other approval should occur on an expedited basis.

We also request that all funds collected in the current fiscal year, FY2011, including any monies from the surcharge, be made available to the USPTO. Several major initiatives of the USPTO that we support have been cancelled or suspended because of the shortfall generated by this year's appropriation, and making these funds available would not only alleviate those problems, but would be seen as a gesture of good faith consistent with the intent of this agreement.

The Honorable Lamar Smith

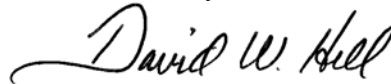
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Other than these concerns, we are pleased to reiterate our strong support for H.R. 1249. While we do not support every provision of the legislation, it does represent a carefully balanced and well-crafted approach to important patent reform, and we thank you and the Judiciary Committee for all of the hard work to this point.

It will take full, permanent, and continuing funding of the USPTO to overcome the challenges it faces. We intend to be diligent in seeing that the compromise is carried out in the future and that the USPTO receives the resources it needs. Given the importance of our intellectual property system as a key economic driver which attracts and protects investment in new technologies, our country's innovators, who pay the fees, deserve no less.

Sincerely,

A handwritten signature in black ink that reads "David W. Hill". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

David W. Hill
AIPLA President