

March 28, 2009

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Room 224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United State Senate
Room 711 Hart Senate Office Building
Washington, D.C. 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the American Intellectual Property Law Association (AIPLA), I am writing to express our strong support for the proposed amendment to S. 515, offered by Senator Coburn, which would provide for a permanent, stable source of funding for the United States Patent and Trademark Office (USPTO). This amendment would establish a revolving fund into which fees paid for patent and trademark services would be deposited and from which expenses for the operations of the Office would be paid. It would allow the USPTO to retain and use all of its fee revenues while ensuring continued Congressional oversight. We urge that the provision be adopted during your consideration of the bill, as it was last Congress.

AIPLA is a national bar association of 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.

The Congress is keenly 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 diversion and use of USPTO fee revenues from 1992 through 2004 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 of patent application filings during that same period, resulting in the present backlog that now requires applications in some critical technology areas to remain pending for sometimes as long as four to five years before commencing examination.

While the Congress and the Administration 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 from returning. The steps already 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 everyone wishes for a more rapid recovery by the Office, it must be remembered that the current situation is the result of a twelve-year under-funded budget. It will take permanent, continued full

funding of the USPTO—as guaranteed by the amendment to S. 515—to overcome these challenges. Without the amendment, the USPTO has no assurance of full funding, and perhaps more importantly, 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.

True patent law reform and improvements at the USPTO depend on the Office’s fiscal ability to meet its growing challenges. 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 cursive script, appearing to read 'Terry Rea', written in dark ink.

Terry Rea
President