

May 28, 2013

The Honorable John Boehner
The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Nancy Pelosi
The U.S. Capitol
Washington, DC 20510

Dear Speaker Boehner and Leaders Reid, McConnell, and Pelosi:

As patent stakeholders with a variety of viewpoints on substantive patent policy, we are united in writing to express our concerns about media reports that application fees being paid to the United States Patent and Trademark Office (“USPTO”) are being diverted from their intended use and instead being used for general government spending. If these reports are accurate, this is a clear violation of the letter and spirit of the America Invents Act (“AIA”), which set up a Reserve Fund to ensure that all fees paid to the USPTO would remain at the USPTO.

Over the last 20 years, approximately \$1 billion in fees paid by patent applicants has been diverted from its proper use at the USPTO. This unwarranted diversion of fees has resulted in more than 600,000 unexamined patent applications and more than 31 months in the average patent pendency time – the wait time from a patent application’s filing until final action on the application by the USPTO. To maintain America’s competitive edge internationally, reducing patent pendency is absolutely vital. Former USPTO Director David Kappos made great strides in seeking to reduce pendency, but this crucial progress will be halted if once again USPTO fees do not remain at the USPTO.

Ending fee diversion is a policy uniformly supported by all stakeholders. Early versions of the AIA included provisions to set up a revolving fund to ensure that all patent fees remained at the USPTO. However, due to the House of Representatives rules and objections from congressional appropriators, the revolving fund was replaced with a Patent and Trademark Fee Reserve Fund. The Reserve Fund was created to ensure that all fees paid to the USPTO would remain available only for USPTO use. A corresponding provision in the annual Commerce/Justice/Science Appropriations bill allowed the USPTO to access any fees above its annually appropriated amount. In tandem, these provisions were intended to stop all future diversion of fees.

Unfortunately, media reports suggest that the Office of Management and Budget has chosen to override the AIA by sequestering five percent of the fees paid to the USPTO – approximately \$148 million. This move realizes the fears of some opponents of the fee-setting authority given to the USPTO by the AIA: that the USPTO fees charged to inventors could become a cash-cow to bring in new general revenue to the government, rather than being used to make the patent application process more efficient and effective. The USPTO significantly raised user fees recently to a cost recovery level per the AIA and, within a month, sequestration is working to take the benefits of those fee increases away from the USPTO and its user community. This

amounts to a new tax on innovators as they try to protect their intellectual property -- not a good direction for a nation that needs to restore vibrancy to its economy.

It is important to note that the USPTO is fully fee-funded; the USPTO receives no taxpayer funds. In fact, if fee income is less than the annual appropriation, the USPTO's appropriation is automatically reduced to the level of the fee income rather than being subsidized by monies from the General Fund.

We urge you to rectify this unacceptable diversion of fees by restoring to the USPTO all of the fees being paid in 2013 and ensure that future across-the-board cuts will not impact fees paid to the USPTO. Thank you for your attention to our concerns.

Sincerely,

Advanced Medical Technology Association (AdvaMed)

California Healthcare Institute (CHI)

CONNECT

Innovation Alliance (IA)

International Federation of Professional and Technical Engineers (IFPTE), AFL-CIO & CLC

Medical Device Manufacturers Association (MDMA)

National Treasury Employees Union (NTEU)

National Venture Capital Association (NVCA)

Patent Office Professional Association (POPA)

Wisconsin Alumni Research Foundation (WARF)