



November 24, 2010

Chairwoman Barbara Mikulski
U.S. Senate
Committee on Appropriations
Subcommittee on Commerce,
Justice, Science, and Related Agencies
Room S 128, The Capitol
Washington, DC 20510

Ranking Member Richard Shelby
U.S. Senate
Committee on Appropriations
Subcommittee on Commerce,
Justice, Science, and Related Agencies
Room S 128, The Capitol
Washington, DC 20510

RE: Full 2011 Funding for the U.S. Patent and Trademark Office – An Urgent Jobs Issue

Dear Chairwoman Mikulski and Ranking Member Shelby:

Intellectual Property Owners Association (IPO) urges prompt passage of the Senate fiscal year 2011 Commerce-Justice-Science appropriations bill or an amendment to the continuing resolution to allow the U.S. Patent and Trademark Office (USPTO) to spend all user fees it collects from our members and other members of the public. The continuing resolution in effect since October 1 limits USPTO spending to the 2010 appropriations rate, *about \$1.5 million per day less than the President's 2011 budget request*. We appreciate your past support for funding the USPTO at a level equal to fee collection estimates and ask you to take immediate action to enable the USPTO to spend all 2011 fee collections. In our judgment, this is critically important to the health of the U.S. economy.

The membership of IPO includes more than 250 companies and 11,000 individuals involved in IPO through their companies or law firms or as individual members. We constitute approximately one-third of the domestic users of the USPTO. Our members span the information technology, pharmaceutical, biotech and traditional manufacturing industries. Members all agree that the United States needs an effective USPTO to keep our nation competitive, encourage innovation and create new jobs.

We support the 2011 appropriations language for the USPTO that has been approved by your Committee. The language will:

- Impose a 15 percent surcharge on major patent user fees during 2011, which we support provided the fee collections will be available to the agency. (Including the surcharge in an appropriations bill or continuing resolution with an appropriate spending authorization makes the surcharge funds available.)
- Increase appropriations significantly - to \$2.322 billion - to allow the USPTO to hire badly-needed patent examiners to attack the backlog of unexamined patent applications and to make other improvements in USPTO operations.

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INTELLECTUAL PROPERTY OWNERS ASSOCIATION

- Provide a \$100 million “buffer” in addition to the base \$2.322 billion to allow spending of fees received in excess of estimated collections.

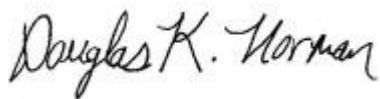
As we understand it, the USPTO is constrained to spending at the rate of \$2.016 billion per year under the existing continuing resolution. The 15 percent surcharge would likely generate an additional \$262 million in fee collections if in effect for the entire fiscal year. (With two months of the year already gone, actual additional collections will be less.) USPTO officials gave an estimate to the Trademark Public Advisory Committee yesterday that in 2011 *the USPTO will likely collect about \$400 million in excess of the existing spending limit*, taking into account the surcharge and a larger number of application fees and other fees being paid to the agency. Four hundred million dollars can be the difference between success and failure for the agency in stimulating the economy and creating American jobs. As you know, no general taxpayer dollars are at stake. The USPTO is 100 percent funded by user fees.

As stated, we support your Committee’s bill. In addition, we urge updating the appropriations in the bill to match the latest collection estimates and increasing the buffer to \$200 million so that if the actual collections exceed the estimates, the agency will still be able to use all of the fees it collects. We believe a \$200 million buffer is reasonable, given that the USPTO’s fee estimates for 2010 turned out to be nearly \$200 million understated.

The funding problem is urgent and needs to be addressed this calendar year. If Congress opts to pass a new continuing resolution extending into the new calendar year instead of passing the 2011 Commerce-Justice-Science appropriations bill, it is imperative to include an amendment or “anomaly” for the USPTO. Precedent exists for an exception for the USPTO in a continuing resolution. In Public Law 110-5, covering fiscal year 2007, the USPTO was given authority to spend at the rate of estimated collections. The same should be done now.

Again, we appreciate and support the Committee’s hard work to ensure that the USPTO can access its user fees so it can best support American innovation and job creation. We stand ready to assist the Committee in any way we can.

Sincerely,



Douglas K. Norman
President

Cc: Members of Appropriations and Judiciary Committees