



July 14, 2010

The Honorable Gary Locke
Secretary
Department of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

We are writing to express views shared by our three organizations concerning resources available to the U.S. Patent and Trademark Office in the coming months and years. In this regard we would like to discuss two specific issues relating to PTO funding. One is the OMB June 8 Memorandum on Fiscal Year 2012 Budget Guidance. The other is the unavailability to the PTO of an estimated \$200,000,000 of user fees actually collected in the current fiscal year.

For almost 20 years, the PTO has been fully funded by user fees. The fact that all funding for the Office is provided by the Office's customers is reason enough to not consider the PTO for inclusion in the initiative to reduce discretionary spending by 5% in each Department or Agency. However, an even more important reason is the mission of the PTO.

Our nation's patent system is a critical component of the engine that drives the U.S. economy and contributes greatly to United States world leadership in innovation and technological advancement. However, the efficiency and effectiveness of that system is threatened by a substantial and growing shortfall in funding and resources.

The Office has over 1.2 million pending patent applications, three-quarters of a million of which have not received a first office action. Average pendency from application to final action is 35 months. In some critical technologies, it is substantially longer. For example, in Workgroup 2190 that is responsible for patents relating to software development, average pendency to first office action is 46.4 months, and total pendency is 55.5 months. In the steps that the Department might take to meet the objective of a 5% reduction in spending, OMB Director Orszag's June 8 Memorandum lists first the elimination of low-priority programs that have the lowest impact on the mission of the Department. We strongly believe that the PTO cannot be considered to be a low priority program, and should not be considered for a reduction in funding to meet the OMB objective.

Secondly, and for the same reasons, we strongly support the Administration's July 12th request to Congress for a supplemental appropriation to make available to the Office the fees collected which are in excess of the current 2010 annual appropriation.

(http://www.whitehouse.gov/omb/assets/budget_amendments/amendment_07_12_10.pdf).

We agree with President Obama that these additional funds are vital to "support efforts to reduce backlogs in processing patent applications – by spurring innovation and reforming U.S. Patent and Trademark Office operations to make them more effective." Our patent system is suffering from the lack of these funds, and they should be made available to the Office to avoid further damage. We urge you to continue with these efforts and stand ready to help encourage Congress to enact the supplemental quickly.

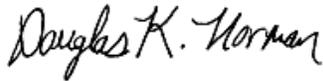
Sincerely,



Don. W Martens, Chair
ABA Section of Intellectual Property Law



Alan J. Kasper, President
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Douglas K. Norman, President
Intellectual Property Owners Association