

THE COALITION FOR 21ST CENTURY PATENT REFORM
Protecting Innovation to Enhance American Competitiveness
www.patentsmatter.com

June 28, 2013

Hon. Mike Honda
U.S. House of Representatives
Washington, DC 20515

Dear Representative Honda:

I am writing to you on behalf of the Coalition for 21st Century Patent Reform (21C) to express our strong support for H.R. 2582, the "PATENT Jobs Act," a bill that would terminate the application of sequestration to the United States Patent and Trademark Office (USPTO) for the current fiscal year and exempt it from any sequestration through FY 2021.

The 21C is a broad and diverse group of nearly 50 global corporations who employ hundreds of thousands American workers. As you know, we actively participated in the discussions that resulted in the AIA in 2011. We believe that the AIA offers great potential to improve the patent system and stimulate the innovation that will create jobs for American workers. But if the user fees paid to the USPTO are not made available for it to use this fiscal year, the backlog in the examination of patent applications will be exacerbated and the implementation of the new quality-enhancing post-grant review and inter partes review procedures created by the AIA will be impeded. The decision to apply sequestration to the USPTO was unwise, shortsighted, and could not have come at a more inopportune time.

The USPTO was plagued for years by an appropriations process which denied the Office the use of fees paid by patent applicants for the timely examination and issuance of patents. Since 1980, approximately one billion dollars in fee revenues were diverted from use by the Office and used to support other government programs, resulting in the thirty plus months it now takes to obtain a patent. The 21C supported the solution to this funding problem that was contained in Section 22 of H.R. 1249¹ as reported by the House Judiciary Committee by a vote of 32 to 3 after being approved by the Senate by a margin of 95 to 5. Section 22 would have established a revolving fund into which all fee revenues would be deposited for use solely to provide the services for which the fees were paid. It would have ensured that the Office would have been able use all of the fees it receives to do its job.

Unfortunately, this solution was not ultimately adopted, and the user community was instead given a written "commitment" that the Committee on Appropriations would "ensure that all fees collected by the PTO in excess of its appropriated level will be available until expended only to PTO for support services and activities in support of the fee paying community." In our view, the application of sequestration to the Office is inconsistent with this commitment. Application of the sequester to the fee revenues paid by these users is tantamount to imposing a special tax on innovators and job creators, the very last group of individuals that sound public policy would suggest should be singled-out for such treatment.

¹ Section 22, H.R. 1249, p 130, at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1249rh/pdf/BILLS-112hr1249rh.pdf>.

The impact of sequestration has been severe. The USPTO has reported that over 100 million dollars of USPTO fee revenue will be withheld and unavailable for it to use this fiscal year. Training has been virtually eliminated and examiner hiring has been halted while the USPTO waits to see if future fee revenue will allow it to resume. This comes just when the Office was in the process of growing its staff to meet its promise to decrease the existing patent application backlog, a backlog that results in applicants having to wait more than thirty months to obtain a patent.

While the 21C would prefer to see Congress establish a revolving fund along the lines of section 22 of the AIA to permanently ensure that the USPTO fee revenues would be protected and available for the uses for which they are paid, we believe it essential that H.R. 2582 be promptly enacted to exempt the USPTO from the application of sequestration. Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act lists over seventy activities which are exempt from any order of sequestration. The USPTO should clearly be on this list of exemptions. In our view, it is at least as deserving, if not more so, of being exempted from sequestration than many of the other listed entities, including, for example, the "Compact of Free Association" (between the Government of the United States and the Governments of the Federated States of Micronesia, the Marshall Islands, and Palau) or the Universal Service Fund (which requires telecommunications providers to contribute in an equitable and nondiscriminatory manner to provide specific, predictable, and sufficient funds to preserve and advance universal service).

Moreover, as I noted in my May 31, 2013 letter to Chairmen Goodlatte and Leahy² regarding sequestration, it is clear that when there is a desire to address problems arising from sequestration, solutions can be found. Examples mentioned included the elimination by Congress of the air traffic controller furloughs that the FAA had imposed and the restoration of the tuition assistance program for active duty troops which had been imposed in the name of sequestration.

On behalf of the 21C, I want to express our deep gratitude to you for introducing H.R. 2582 to stem the damage that sequestration is causing the USPTO before it becomes irreversible. We pledge to work with you and support your efforts to expeditiously achieve its enactment.

Sincerely,



Carl B. Horton
Chair
Coalition for 21st Century Patent Reform

cc: Hon. Zoe Lofgren
Hon. Anna Eshoo
Hon. Frank Wolf
Hon. Chaka Fattah

² Available at: <http://www.patentsmatter.com/issue/pdfs/Sequestration.pdf>.