

# THE COALITION FOR 21<sup>ST</sup> CENTURY PATENT REFORM

*Protecting Innovation to Enhance American Competitiveness*

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May 31, 2013

Hon. Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Hon. Patrick Leahy  
Chairman  
Committee on Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Mr. Chairmen:

In 2011, Congress made historic changes to the U.S. patent system. The America Invents Act (AIA) included the most important revisions to our patent laws since 1836. Congress greatly enhanced the responsibilities of the United States Patent and Trademark Office (USPTO) by placing new burdens on the USPTO. It did so with the expectation that nation's patent laws would be more effectively administered.

In March of this year, the provisions of the (AIA) finally took full effect. Over the past 18 months, the USPTO has been at work creating new capabilities and enhancing its existing ones in order to assure an effective implementation of the new law. Thus, FY 2013 is in many respects the most critical time for the USPTO in the last century. The resources available to the USPTO over the next months and years will largely determine whether the promise of the (AIA) – more timely and higher quality patent examination – will be realized.

I am writing you on behalf of the Coalition for 21<sup>st</sup> Century Patent Reform (21C) to express our grave concerns over the withholding from the USPTO the user fees it has collected. The 21C is a broad and diverse group of nearly 50 global corporations who employ hundreds of thousands Americans across this great country. 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

Those of us who are familiar with the challenges the USPTO faces are chagrined that, at this historic juncture in the history of the U.S. patent system, the USPTO will be facing severe adverse impacts from the sequestration of the fees it collects from its users. The OMB decision to apply the sequester to the Office is not only shortsighted,

but creates unacceptable with long-term repercussions for the patent system. If necessary to reverse the application of the sequester to the USPTO, Congress should act and should act promptly before the impacts of sequester become unmanageably expensive and difficult to reverse.

In our support of the legislative proposals that culminated in the AIA, the 21C began with a focus on the most fundamental problem facing our patent system – the need for adequate and stable funding for the USPTO. This need was highlighted in the reports of both the National Academies of Sciences and the Federal Trade Commission. The new rules and procedures in the AIA for improving the quality and reliability of patents will only be successful if the Office is given the resources needed hire and train additional examiners and upgrade the IT systems necessary for them to properly search and examine patent applications.

In an attempt to help the USPTO build the necessary resources, the 21C supported granting the Office authority to set its fees to cover its costs of operations – fees which are the lifeblood of the Office since it receives no taxpayer support. Providing increased fee revenue to the USPTO is absolutely essential so that it can hire the added staff needed to address the backlog and delays in the examination process, implement the new post-grant procedures to improve patent quality, and modernize the thirty-year old search and other IT systems which have hampered the ability of the Office to properly serve its users. Our Coalition understood that this meant that the fees we pay were going to be increased. The only thing we asked in return was that all of our fees be used to provide the services for which they were paid. Congress responded to this request with section 22 of the AIA establishing the Patent and Trademark Fee Reserve Fund. Any fees in excess of the appropriation to the USPTO in any given year would not, as in years past, be deposited in the general treasury, but would be deposited in the Reserve Fund for use only by the Office.

According to a report given by the USPTO at the meeting of the Patent Public Advisory Committee on May 16, 2013, however, we learned that approximately 133 million dollars of USPTO fee revenue will be withheld and deposited in the Salaries and Expenses Account of the USPTO and will be unavailable in FY 2013. This is in fact the same account into which the nearly one billion dollars of fee revenues diverted over the last twenty years have been deposited. The sequestered funds will only be available after FY 2013 if appropriated to the USPTO and we are not encouraged by a long history during which, to our knowledge, the Office has never been given access to use any of the fee revenues which have been diverted. This is clearly contrary to the commitment of Congress to the user community in establishing the Reserve Fund into which every dollar of fees paid to the USPTO was to be deposited and used only for expenses of the Office relating to the processing of patent applications and trademark registrations and for its administrative costs.

The impact has been immediate and harsh. Information technology modernization has been scaled back significantly. Travel and training has been virtually eliminated. Hiring of most support personnel has been stopped and examiner hiring has been halted while

the Office waits to see if future fee revenue will allow it to resume. This comes just when the USPTO was in the process of growing its staff to meet its promise to decrease the existing patent application backlog, as well as to properly implement the new first-inventor-to-file rules and the three new post-grant procedures established by the AIA.

To now deny the USPTO the use of the fees paid by users in the name of sequestration is not only shortsighted, but it is absolutely unnecessary. Just last month, the IP Commission Report was released detailing the impact of one of the most pressing issues of economic and national security facing the United States – the theft of American intellectual property and its consequences for the future of our country. The Report outlined a series of administrative and legislative actions that could be taken to protect American intellectual property from misappropriation by our foreign competitors. We believe the first step should be to set an example by fully funding the USPTO so that American ingenuity can be adequately protected in this country. How can we convince other countries to protect our technology in their countries if we fail to support the key institution for accomplishing this – the USPTO – in this country?

Moreover, it is clear that when there is a desire to address problems arising from sequestration, solutions can be found. In April of this year, Congress quickly found a way to eliminate the air traffic controller furloughs that the FAA had imposed in the name of sequestration. While perhaps the most visible action to relieve the impact of sequestration, it was not the only relief granted. In March, the Defense Department was given the flexibility to delay furloughs of civilian workers and to restore tuition assistance program for active duty troops.

Nor is legislation the only answer. In a May 21, 2013 letter to the Director of OMB, Sylvia Matthews Burwell, the American Intellectual Property Law Association pointed out that the Administration had options in interpreting the Balanced Budget and Emergency Deficit Control Act of 1985 in the application of sequestration to the USPTO. We believe Congress should demand an explanation from OMB as to why it did not choose to follow the clear language of the Act and exempt the USPTO.

On behalf of the 21C, I urge you to take corrective action to end the application of sequestration to the USPTO. We pledge to work with you and support you efforts to achieve this goal.

Sincerely,



Carl B. Horton  
Chair  
Coalition for 21<sup>st</sup> Century Patent Reform

Cc: Hon. John Conyers  
Hon. Charles E. Grassley