

June 9, 2011

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
United States House of Representatives  
H-307, The Capitol  
Washington, D.C. 20515

The Honorable Paul Ryan  
Chairman  
Committee on the Budget  
United States House of Representatives  
207 Cannon House Office Building  
Washington, D.C. 20515

Chairman Rogers and Chairman Ryan:

I read with concern your letter of June 6<sup>th</sup> opposing section 22 of the America Invents Act (H.R. 1249), which would prevent the diversion of user fees from the Patent and Trademark Office (PTO) by Congress. I urge you to reconsider your position as this section does not conflict with the ability to remain committed to restraining spending, improving accountability, and reducing the debt.

The goal of patent reform is to strengthen and improve our patent system. I share that goal, but I do not believe it is attainable without addressing the financial crisis facing the PTO. Section 22 would provide a solution to this crisis by depositing PTO user fees directly into a revolving fund at the Treasury for use only by the PTO. Congress would not have the ability to divert user fees to other general revenue purposes, and the PTO would remain accountable to Congress. In fact, there is unanimous agreement in the patent industry that section 22 is urgently needed for true patent reform.

Section 22 would not hand the “power of the purse” to the Obama Administration, put the PTO on “auto-pilot,” or eliminate the ability of Congress to perform oversight of the PTO. The “power of the purse” does not provide Congress authority over non-taxpayer funds. Although the PTO is subject to the appropriations process, it does not use taxpayer money. Rather, PTO receives fees paid by users who file patent and trademark applications—fees paid by small inventors, companies, and universities to protect their ideas and technology. Those fees are deposited into the general fund at the Treasury, and then PTO must request appropriations. However, when PTO’s fee income is greater than Congressional appropriations, we spend “excess” fees on other general revenue purposes, rather than providing applicants the high quality PTO services for which they paid.

Section 22 will not put the PTO on “auto-pilot” or eliminate oversight of the PTO. In fact, nothing in this section allows the PTO to escape Congressional oversight and accountability. Rather, this section requires extensive transparency and accountability from the PTO due to the four reporting requirements, which give Congress numerous opportunities to conduct vigorous oversight. For many years I have advocated for more transparency in all areas of our government, and the PTO is no exception.

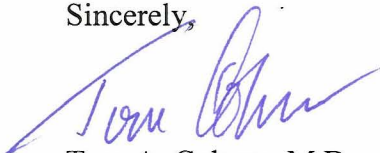
Section 22 does not change the jurisdiction of any congressional committee. Congress may still bring the PTO Director before it at any time to demand justification for PTO performance. In fact, this section has the potential to yield more information to Congress and provide more transparency to the public than the current PTO funding arrangement.

As you note in your letter, patent applications are filed by residents of every state, and the profitability of many businesses depends on the ability to market patent-protected products and technologies. Thus, lack of quality service affects all of our constituents. Many patent applications do not receive timely review by the PTO as a result of the backlog of unexamined patents and the time it takes to have an application examined (pendency). In fact, total pendency is approximately 34 months, and over 706,000 applications are waiting for a patent examiner’s first action.<sup>1</sup>

One of the primary reasons for these lengthy waiting periods is lack of PTO resources. Without adequate funding, the PTO cannot hire enough patent examiners, which not only slows application processing, but also impacts the quality of patents issued. Delay in application review and low-quality patents hampers technology, innovation, economic development, and ultimately job creation. Permanently ending the practice of Congressional fee diversion will alleviate these problems, enhance the efficiency of the PTO, and drive our economic recovery.

We cannot have true patent reform without ending fee diversion and providing the PTO with a permanent, consistent source of funding. I strongly urge you to reconsider your position and support this section as it will be the key to effectively implementing the reforms in H.R. 1249.

Sincerely,



Tom A. Coburn, M.D.  
United States Senator

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<sup>1</sup> United States Patent & Trademark Office, Data Visualization Center, Patents Dashboard, available at <http://www.uspto.gov/dashboards/patents/main.dashboard>.