

THE COALITION FOR 21ST CENTURY PATENT REFORM

Protecting Innovation to Enhance American Competitiveness

SUPPORT AN EFFECTIVE PATENT AND TRADEMARK SYSTEM: OPPOSE DIVERSION OF INVENTORS' FEES

The Coalition for 21st Century Patent Reform has consistently supported comprehensive reform of our patent laws to make the system more efficient and effective. A linchpin of reform efforts is giving the USPTO adequate resources to promptly grant reliable patents. Today, the USPTO is critically under-funded, which stymies its efforts to address patent pendency and quality. But the USPTO's efforts – and American innovation – are undermined when the fees inventors pay to have their patent applications examined are diverted from the PTO and used for unrelated purposes. The bill entitled "Patent and Trademark Office Fee Modernization Act of 2010," scheduled on the Suspension Calendar for Tuesday, May 18, does nothing to address the ongoing diversion of the fees inventors pay to the USPTO. The Coalition for 21st Century Patent Reform opposes this bill.

We support a more efficient and effective USPTO – one that promptly grants reliable patents that will attract venture capital for independent inventors and start-ups and that can justify and safeguard the large investments in new plants and equipment that companies must make to create new jobs and bring new products to the market. We need legislation that guarantees that the fees paid by the users of the patent system are adequate to hire and train needed examiners and to provide them with the modern information technology necessary to conduct thorough examinations and grant valid patents.

Unfortunately, the "Patent and Trademark Office Fee Modernization Act of 2010" is not that bill. Although it authorizes the USPTO to set fees to recover its estimated costs, it contains no safeguards to prevent those fees from being diverted to support other totally unrelated government programs.

One needs look no further than the FY 2010 appropriation for the USPTO to see the risk that any additional fees collected under the proposed legislation could easily end up doing nothing to help American inventors and innovation. Congress appropriated \$1.887 billion to the USPTO for FY 2010, but it did not include the flexibility it has provided in recent years to allow the Office to retain and use any fee revenues that it collects in excess of the amount appropriated.

The USPTO Director recently testified before Congress that the Office will collect as much as \$232 million in user fee revenues above that amount. Unfortunately, the USPTO will not be able to use any of those additional fees inventors paid to have their applications processed. The "excess" \$232 million will simply go into the general treasury. In FY 2010, the USPTO will have fewer patent examiners than it had in FY 2009. The surplus user fees will be unavailable even to replace the examiners who are leaving.

This is not an isolated example. With the fee diversion this year, over one billion dollars will have been collected from America's innovators and used elsewhere since 1992. The "Patent and Trademark Office Fee Modernization Act of 2010" would not only allow this tax on innovation to continue, it would allow the Director to increase fees, thus risking that even greater amounts will be diverted.

Moreover, this legislation omits all of the quality-enhancing provisions that have received widespread support in both the House and Senate. For example, the bill does not include any efficiency and quality-enhancing provisions such as those that would simplify the rules and procedures for granting patents, allow the public to provide patent examiners with relevant information before deciding whether a patent can be granted, or permit prompt challenges of newly issued patents to ensure they satisfy the rigorous standards for patenting.

The Coalition for 21st Century Patent Reform supports giving the USPTO the funds and tools it needs to successfully carry out its responsibilities; it opposes legislation that will only serve to facilitate further misuse of patent and trademark fee revenues. The Coalition stands ready to continue to assist Congress in passing comprehensive patent reform legislation, which will ensure that American innovation remains the envy of the world.

We urge a "NO" vote on the "Patent and Trademark Office Fee Modernization Act of 2010."