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June 20, 2011

The Honorable Lamar Smith
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We understand that the delay in House consideration of H.R. 1249, the patent reform bill, is due to objections of the Appropriations Committee to section 22, which would establish a revolving fund into which USPTO fee collections would be deposited and from which the Office would have immediate access to operating funds.

The American Bar Association considers the funding mechanism provided by section 22 with its revolving fund to be an indispensable component of any patent reform measure, one that is essential for the Office to conduct effective and efficient financial planning and business operations. Unfortunately, the language proposed to replace section 22 would destroy this essential component of H.R. 1249. Basic funding for the Office would remain under the existing appropriations process, unchanged. Fees collected in excess of the appropriated amount would be deposited in a Reserve Fund, but access to those funds would also require an appropriation. The proposal to treat the excess funds as a reprogramming may provide the Office somewhat better access to those funds. However, several of the section 505 requirements for such reprogramming add uncertainty to this process. In addition, those provisions would be made applicable only in fiscal year 2012 and lack the needed certainty that would be provided by section 22 of the bill.

We urge you to reject this proposed substitute for section 22. We further propose that these differences be resolved through the regular order, under the process for amendment that the Rules Committee has announced. Affording the House an opportunity to vote on amending section 22 is, in our view, the appropriate and fair way to resolve these differences.

Sincerely,



Thomas M. Susman