

June 13, 2011

Speaker John Boehner
Office of the Speaker
H-232 U.S. Capitol
Washington, DC 20515

Democratic Leader Nancy Pelosi
Office of the Democratic Leader
H-204 U.S. Capitol
Washington, DC 20515

Dear Speaker Boehner and Leader Pelosi:

We write to express our unified support for Section 22 of H.R. 1249, “The America Invents Act.” We heartily commend Judiciary Committee Chairman Smith, Ranking Democrat Conyers, Subcommittee Chairman Goodlatte, Ranking Democrat Watt, and the other Judiciary Committee Members for their wise decision to include Section 22 in the bill from its introduction.

Section 22 is a simple and straightforward provision that creates a mandatory revolving fund in the Treasury to consistently capture all user fees collected by the U.S. Patent and Trademark Office (“USPTO”) and to allow for their expenditure for no other purpose than funding the USPTO. Unlike most other federal agencies, the USPTO earns fees paid by inventors, companies, research institutions, and universities that can offset every taxpayer dollar appropriated for its operations. The sequestration of funds envisioned by Section 22 is necessary to prevent user fees collected from patent and trademark applications from being redirected to other non-USPTO purposes. Section 22 is necessary because over the last two decades more than \$875 million in user fees has been redirected to other governmental purposes in what amounts to a hidden tax on innovation.

The funding of the USPTO via user fees is part of the implicit bargain between our nation and innovators wherein inventors make details about their inventions publicly available for the common good in exchange for a limited but exclusive intellectual property right. This bargain advances Congress’ Constitutional power found in Article I, Section 8 “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Although the USPTO is not well known, it may be the single greatest facilitator of private sector job creation and economic growth in America. It is this agency, after all, that issues the patents that businesses — especially startups — need to attract venture capital investment, develop new products and services, and create jobs.

If enacted, Section 22 would not abolish or hinder the oversight powers of Congress. Congress will still be able to direct spending where needed within the USPTO but Congress will not, however, be able to divert funds or otherwise reduce the amount of revenue that the agency takes in and holds in reserve. Congress may still conduct oversight hearings on USPTO operations.

Under Section 22, the USPTO will still be required to submit to Congress an annual report of its preceding fiscal year operations as well as its plans for the future. The Director of the USPTO will also be required to submit an annual spending plan to congressional appropriators, provide for an independent audit of the agency, and prepare a budget for the President for inclusion in the administration's budget. The transparency and accountability made possible through robust oversight helps ensure the USPTO will be held accountable to efficiently executing its Constitutional mission.

Regarding budgetary impact, the CBO score states that H.R. 1249 reduces direct spending by \$725 million over 10 years and decreases the budget deficits by \$717 million over the same time period. The gross mandatory spending increases reflect workload increases that the agency can absorb based on its ability to retain all of its user fees. As a practical matter, the agency is raising through user fees every dollar it spends and should not be treated as an agency that is merely spending tax dollars.

Although each of our organizations has varying views on the reforms contained in H.R. 1249, we unanimously support Section 22 and believe that it is the cornerstone of any patent reform legislation. Absent a statutory mechanism to prevent future fee diversion, as we have seen all too often in previous years, the existing and new responsibilities vested in the USPTO will suffer, the ability of the USPTO to plan long-term and build the agency our innovation economy demands will be frustrated, and the job-stifling patent application backlog will continue.

We appreciate your commitment to advancing innovation, and we strongly encourage your leadership to retain Section 22 of H.R. 1249 when the bill comes to the House floor for consideration.

Sincerely,

AdvaMed—the Advanced Medical Technology Association
Air Products and Chemicals, Inc.
Allergan, Inc.
AMD
American Council on Education
Amylin Pharmaceuticals, Inc.
Apple
Association of American Medical Colleges
Association of American Universities
Association of Public and Land-grant Universities (APLU)
The Association of University Technology Managers (AUTM)
BayBio
BAE Industries, Inc.
Beckman Coulter, Inc.
Binghamton University, State University of New York
BIOCOM
The Biotechnology Industry Organization (BIO)

Boston Scientific
Bridgestone Americas
Brown University
Business Roundtable
California Healthcare Institute (CHI)
California Institute of Technology
Case Western Reserve University
Caterpillar Inc.
Cephalon
Clemson University
Coalition for Patent Fairness
CONNECT
Corning Incorporated
Council on Government Relations
Cummins-Allison Corporation
Cummins Inc.
Dell
Dolby Laboratories
Duke University
DuPont
Eastman Chemical Company
Edison Nation
Eli Lilly and Company
Emory University
Environmental Toxins Solutions Inc.
Eventys
ExploraMed Development, LLC
Fallbrook Technologies Inc.
Financial Services Roundtable
ForSight Labs, LLC
ForSight VISION4, Inc.
ForSight VISION5, Inc.
The Foundry, LLC
Freudenberg North America
General Electric
Gen-Probe Incorporated
Gentex Corporation
Georgia Institute of Technology
GlaxoSmithKline
HiperSem Inc.
Hoffman-La Roche Inc.
Honeywell
IBM
Illinois Tool Works, Inc.
Indiana University
Innovation Alliance

Intel
InterDigital
International Federation of Professional & Technical Engineers (IFPTE)
International Game Technology (IGT)
Inventors Digest Magazine
Iowa Biotech Association
Iowa State University
The Johns Hopkins University
Johnson & Johnson
Kansas State University
Kodak
Luminex Corporation
Medical Device Manufacturers Association (MDMA)
Medtronic, Inc.
Michigan State University
Microsoft
Millennium Pharmaceuticals
Milliken & Company
Miramar Labs, Inc.
Massachusetts Institute of Technology
Motor & Equipment Manufacturers Association
National Association of Manufacturers (NAM)
National Association of Patent Practitioners
National Treasury Employees Union
National Venture Capital Association
Neodyne Biosciences, Inc.
NeoTract, Inc.
New Venture Advisors
New York University
North Carolina State University
Novartis
Novozymes
NuVasive
OnLive
Oracle
Orthopedic Venture Partners
Patent Office Professional Association (POPA)
Penn State University
Pfizer
Procter & Gamble
Product on Demand
Qualcomm, Inc.
Rearden Companies
Rutgers, The State University of New Jersey
Stanford-Burnham Medical Research Institute
Stanford University

The State University of New York
The Stella Group, Ltd.
Stony Brook University, SUNY
SuVolta, Inc.
Symantec
Syngenta
Tessera
Texas Instruments
Three Arch Partners
3M
TI Group Automotive Systems, LLC
Tulane University
United Steelworkers (USW)
University of Arizona
University of Buffalo
University of Central Florida
University of Cincinnati
University of Illinois
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University of Michigan
University of Minnesota
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University of North Carolina at Chapel Hill
University of Oregon
University of Toledo
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University of Washington
UpWrite, LLC
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USG Corporation
Vanderbilt University
Vari-Form Inc.
Vibrynt, Inc.
Walbro Engine Management LLC
Washington Biotechnology & Biomedical Association
Washington State University
Wayne State University
Western Michigan University
Weyerhaeuser
Yale University
Zimmer, Inc.