

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  
Beckman Coulter, Inc.  
Binghamton University, State University of New York  
BIOCOM  
The Biotechnology Industry Organization (BIO)  
Boston Scientific

Bridgestone Americas  
Brown University  
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.  
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 Venture Capital Association  
Neodyne Biosciences, Inc.  
NeoTract, Inc.  
New York University  
North Carolina State University  
Novartis  
Novozymes  
NuVasive  
OnLive  
Oracle  
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 of Arizona  
University of Buffalo  
University of Central Florida  
University of Cincinnati  
University of Illinois  
University of Maryland  
University of Michigan  
University of Minnesota  
University of Nebraska  
University of North Carolina at Chapel Hill  
University of Oregon  
University of Toledo  
University of Virginia  
University of Washington  
U.S. Chamber of Commerce  
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.