



PUBLIC ADVISORY COMMITTEES OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

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July 27, 2021

The Honorable Jeanne Shaheen
Chair, Senate Subcommittee on Commerce,
Justice, Science, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Matt Cartwright
Chairman, House Subcommittee on
Commerce, Justice, Science, and Related
Agencies Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

The Honorable Jerry Moran
Ranking Member, Senate Subcommittee on
Commerce, Justice, Science, and Related
Agencies Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Robert B. Aderholt
Ranking Member, House Subcommittee on
Commerce, Justice, Science, and Related
Agencies Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

RE: Request for Appropriation Consistent with the AIA and Precedent

Dear Committee Chairs and Ranking Members:

As Chair of the Public Patent Advisory Committee (PPAC) of the United States Patent and Trademark Office (USPTO), I write on behalf of our members to urge that Congress, in formulating the USPTO appropriation bill, continues to implement the intent of the 2011 Leahy-Smith America Invents Act (AIA) by appropriating the USPTO estimated fee collection of \$4.058 billion, instead of the President's Budget Request of \$3.994 billion in annual budgetary requirements. Christopher Kelly, Chair of the Trademark Public Advisory Committee (TPAC), and the members of the TPAC join in this request.

Congress has mandated the USPTO to operate as a business funded solely by the fees it collects for services rendered to the public. Because requests for these services are often received in one fiscal year and fulfilled in a later year, the USPTO must engage in multi-year planning and budgeting. The USPTO typically spends most of its funds to provide services and

reserves a portion to mitigate against future risks, including financial and operational risks. Fluctuations in demand, economic uncertainty, and other external circumstances – such as sequestration, a lapse in appropriations, and the current, protracted pandemic – inevitably arise. To manage such fluctuations, the USPTO uses internal operating reserves throughout the fiscal year to plan for or to immediately adjust the balance between spending and reserving funds.

The PPAC and the TPAC were created by statute in the American Inventors Protection Act of 1999, to advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (the Director) on the management of patent and trademark operations. The Public Advisory Committees consist of citizens of the United States, chosen to represent the interests of the diverse users of the USPTO. The Public Advisory Committees advise the Director on the policies, goals, performance, budget, and user fees of the patent and trademark operations. The PPAC and TPAC each have a dedicated Finance Subcommittee, among others, that work closely with the Director and the USPTO CFO.

The Budget Request, if accepted, would significantly and negatively impact operations by disrupting the prudent management practices the USPTO has exercised under the leadership of the last three Directors. Specifically, an estimated \$64 million in fees that the USPTO expected would be immediately available in its internal operating reserve will no longer be available to synchronize spending with the dynamic demand for services. Instead, in the Budget Request, those funds would be deposited in the Patent and Trademark Fee Reserve Fund (PTFRF), where access to them would require reprogramming without any specific time for that process. Delays or disruption of the USPTO's ability to access its funds will disrupt its operations, and such disruptions could very well have a ripple effect on the speed of protecting innovation, which in turn will negatively impact our already vulnerable U.S. economy.

Congress enacted the AIA to provide flexibility and continuity in sustaining USPTO operations. The PTFRF was established to supplement the USPTO's internal operating reserve (which the Government Accountability Office recommends as a "best practice" for fee-funded organizations) rather than to limit the amount of deposits to the operating reserve as the Budget Request proposes. Both reserves are required to fund both long-term expenditures (*e.g.*, updating legacy IT systems) and necessary near-term expenditures (*e.g.*, adjusting examiner production to unexpected influxes of demand related to emerging technology areas (such as vaccines, green energy, and artificial intelligence), increased foreign filings (in patents and trademarks), and a growing economy).

The PTFRF receives and stores fees the USPTO did not estimate collecting in a given fiscal year. This mechanism properly ensures that the USPTO will have sole access to all fees collected, although that access occurs at an undetermined future date. Accordingly, access to the PTFRF funds will not always occur within the time frame necessary to mitigate the financial risk associated with operating a solely fee-funded agency with multiyear operating requirements. In contrast, the internal operating reserve provides the USPTO the ability to execute an intentional risk mitigation strategy using timely access to the fees collected, when, for example, the USPTO collects and deposits fees in the internal operating reserve to fund expected operating requirements in excess of estimated fees in a future year.

The undersigned members of the Public Advisory Committees represent all of the stakeholders who depend on the services of the Office. We are at a loss to understand why the

Budget Request would abandon the pre-existing planning and budgeting process that has been in place and successfully implemented for over a decade under both Democratic and Republican Administrations. The pre-existing process (1) has provided full access to all fees collected, unless sequestration occurs, and (2) allows timely access to all fees collected, except for years in which actual collections exceed estimates. Notwithstanding the many challenges of the last decade, the USPTO has operated without any material interruptions while both increasing the number of services to the public and improving the quality of those services during the decade, fueling business and innovation that is important to our economy. The success of the USPTO is due in part to its ability to independently make prudent and timely spending adjustments in response to changes in demand throughout the year, exercising flexibility that is built into the pre-existing process described above.

For these reasons we respectfully request that Congress appropriate to the USPTO its estimated fee collection level of \$4.058 billion rather than the \$3.994 billion level requested in the President's Budget. We are available to meet with you and your staff to explain further the urgent need for your intervention in this matter.

Sincerely,

Julie Mar-Spinola
Chair
Patent Public Advisory Committee

Christopher Kelly
Chair
Trademark Public Advisory Committee

Cc: The Honorable Patrick J. Leahy, Chairman, Subcommittee on Intellectual Property
The Honorable Thom Tillis, Ranking Member, Subcommittee on Intellectual Property
The Honorable Hank Johnson, Chairman, Subcommittee on Courts, Intellectual Property, and the Internet
The Honorable Darrell Issa, Ranking Member, Subcommittee on Courts, Intellectual Property, and the Internet
The Honorable Gina Raimondo, United States Secretary of Commerce
Andrew Hirshfeld, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

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