



Statement of the U.S. Chamber's Global Intellectual Property Center

ON: Patent Public Advisory Committee Fee Setting Hearing

TO: United States Patent and Trademark Office (PPAC)

BY: U.S. Chamber of Commerce's Global Intellectual Property Center

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The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Global Brand Council

The Chamber remains particularly concerned by government policies that reduce or eliminate the ability of manufacturers to distinguish, and consumers to identify trusted, regulated, and well-known brands.

As such, the Chamber's Global Intellectual Property Center (GIPC) established the Global Brand Council (GBC), to give trademark owners and brands a strong voice in this fight. The GBC is a group focused on the importance of brand integrity. Thus, it is well positioned to offer this perspective on behalf of trademark owners, companies, and organizations concerned with the protection trademarks, design patents, and brand-centric principles across a wide range of industry sectors, both in the United States and around the world.

**Statement
to the
UNITED STATES PATENT AND TRADEMARK OFFICE
on behalf of the
U.S. CHAMBER OF COMMERCE
Thursday, November 19, 2015**

Thank you for the opportunity to offer formal comments on behalf of the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC) and the Global Brand Council (GBC). We appreciate the continued administration of efficient and innovative patent and trademark systems.

Section 10 of the America Invents Act (AIA) requires the United States Patent and Trademark Office (USPTO) to provide a schedule of proposed fees to the PPAC at least 45 days before a Federal Register publication of proposed rules with fee changes. It is our view that while fees should be set for cost recovery, fee increases should be allocated among all patent filings in a reasonable manner that is proportionate to the actual costs incurred by the USPTO.

The Chamber applauds the USPTO for its stated goal to simplify and streamline its work to reduce costs. We appreciate and support the USPTO's aim of recovering sufficient fees to cover the cost of its patent operations, but we believe those fees should be set in a fair and equitable manner based on actual costs of operations. The proposed fee increase does not achieve this goal.

Our comments will outline three main points: (1) the proposed fee increases for design patents, and specifically the issuance fee is substantial; (2) any fee increases should be reasonable, proportionate and incremental; and (3) fees should conform to international standard.

IMPORTANCE OF GLOBAL IP PROTECTION & GIPC INDEX

In many countries around the world, innovators face insurmountable obstacles in their efforts to bring groundbreaking ideas to market, denying all of us effective access to much of the world's creative capacity.

As demonstrated by the GIPC IP Index, due to a strong IP framework, three-fifths of U.S. exports are generated by IP-intensive industries, supporting some 40 million jobs. And interestingly, nearly one-half of all patents granted are to immigrant

inventors, which support the notion that global entrepreneurs seek environments with strong IP rights.

With the guidance of the U.S. government and industry, we can help build the next generation of exporters of IP. We appreciate that the various fees required to file, prosecute, and obtain patents--specifically design patents--are an integral component of the patent system. However, the current proposed fee structure, in particular the sharp increase of design patent fees, creates a significant impact on businesses' bottom line, which we believe will undermine the ability of inventors and designers to protect their innovations.

The GIPC set out to create an intellectual property roadmap for countries seeking to foster robust intellectual property policies that facilitate the creation of jobs, continued innovation, and access to new technologies.

The GIPC's 2015 International IP Index is an empirical assessment of the strengths and weaknesses of 30 developmentally and geographically diverse countries.

The GIPC Index serves as a discretionary policy tool to those countries wishing to evaluate the strengths and deficiencies in their intellectual property environments.

We have attached a copy of the GIPC Index to our submission to provide further evidence to support the issues raised throughout.

SUMMARY OF MAIN CONCERNS

Design Fee Increases

While the U.S. Chamber understands the general approach of setting fees to recover the cost of providing services, this increase is neither fair nor proportionate. The Chamber understands that the USPTO intends to improve its examination times to bring patents to market faster. We share and applaud that goal. However, there must be a more equitable way to achieve this goal rather than to apply such a sharp increase to the filing, search, examination and, more particularly, the issue fee on design patents.

Fees should be reasonable, proportionate, and incremental.

Historically, most of the revenue growth for design patent application filing fees were achieved in small increments reflecting an overall increase in application filings. In 2014, design and utility patent fees were lowered by about 15%. The U.S. Chamber recognizes that fee increases may be necessary and can be justified, but it is difficult to understand why the fees have fluctuated so dramatically in such a short period of

time. Any fee increases should be equitable, reasonable and proportionate to the actual costs incurred.

Businesses large and small may have a difficult time absorbing substantial increases and should implement incremental increases to allow businesses an opportunity to plan and budget for these additional costs. In addition, small businesses, young entrepreneurs, and innovative industries are more likely to file additional patents when presented with lower upfront costs. Thus, a consistent cost each year is preferred over a steep budgetary increase in a single year.

Fees should conform to international standards.

Businesses are fortunate to work with a cohesive patent and trademark system in the United States. However, some current practices have not evolved with the global economy or other major intellectual property offices. For example, at the USPTO, a design patent covers a single claim. It is common for a company to have to file several design applications in the United States to protect distinct elements found in a particular product. For example, a business may have to file a design application for a whole product, and one or more other design applications to protect separate features found in this product. Thus, each design application carries its own set of fees.

This is in contrast to what is done for example in Europe, where a company may file a single application to cover multiple designs (within a same class). The Office for Harmonization in the Internal Market (responsible for registering European Community Designs) allows applicants to file up to 100 designs in the same application with significant price discounts provided. In the United States, each design is likely to require its own application, which carries its own filing, search, examination and issue fees.

Currently, maintenance fees are not due on U.S. designs. Though not reflected in a separate column on the proposed fee schedules, maintenance fees are arguably already included in the overall cost to obtain a U.S. design patent. These built-in costs could be allocated appropriately for the USPTO reserves rather than increasing the design patent fees. In addition, it is our understanding that electronic design patent filings will ultimately reduce costs to process design patents.

Overall, small incremental increases in fees offer the simplest solution for the USPTO to achieve its financial goals while allowing businesses to anticipate and predict likely fee increases from year to year.

CONCLUSION

We respectfully request the advisory committee recognize the U.S. Chamber's disappointment with this newly proposed fee-setting structure. We are concerned that businesses small and large will be impacted by these significant increases, and we fear this may hinder the USPTO's primary goal of protecting and promoting American innovation.

Adequate and effective protection of intellectual property and establishment of proper administrative requirements for companies is vital to America's economy, and the USPTO should be a model for other countries.

We look forward to working with the USPTO to secure meaningful improvements that will create jobs, support innovation, provide access to technology, and protect consumers in the United States and around the world.