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To: Gongola, Janet; aia_implementation; IP Policy
Subject: International Patent Protection for Small Businesses

Attention Janet Gongola: PLEASE NOTE CORRECTED LINKS

1. Overall, how important is international patent protection to small business? Huge, to say the least, when countries like China openly steal intellectual property and millions of manufacturing and technical jobs are going overseas every year.

When you consider that all net new jobs in America are created by small businesses, the consequences of AIA will be devastating. See, The Importance of Startups in Job Creation and Job Destruction, July 2010, by Tim Kane, Ewing Marion Kauffman Foundation;

http://www.kauffman.org/uploadedFiles/firm_formati_on_i_mportance_of_startups.pdf

Don't lose sight of the fact that AIA was passed by Congress to make it easier for the large multinationals infringe small entity patents and to send more jobs overseas. See, Patent Reform is all About Making it Easier for Multinational Corporations to Steal Innovation and Offshore American Jobs, 4-12-11, by Neil Thomas, Silver Spring, MD;
<http://www.docs.piusa.org/NeilThomas/Patent%20Reform%20is%20All%20About%20Making%20it%20Easier%20for%20Multinational%20Corporations%20to%20Steal%20Inventions%20and%20Offshore%20American%20Jobs,%204-12-11.pdf>

It has now become a 'national security' issue!

2. At what point, if ever, in the growth of small companies does international patent protection become important? From the day that Congress enacts legislation and the USPTO writes regulations that hurts them. Small companies are competing from 'day one' in a global market for survival with companies worldwide which have huge cost advantages, regulatory advantages and governments which protect them from competition, e.g. The Peoples Republic of China, for one example.

As pointed out by the former Senior Judge, IP Division of Beijing High People's Court about a previous version of AIA stated, "...it will make the patent less reliable, easier to be challenged and cheaper to be infringed...will give the companies from developing countries more freedom and flexibility to challenge the...US patent...and make it less costly to infringe. The bill...will weaken the patent protection..." See, China Intellectual Property News, Nov. 7, 2007; quote from the former Senior Judge, IP Division of Beijing High People's Court, about a previous version of the pending American Invents Act H R 1249;
http://www.reformai.org/sites/default/files/071107-China%20Intellectual%20Property%20News_Certified%20with%20Selectable%20Text.pdf

3. What challenges, if any, interfere with the growth and competitiveness of small companies if international patent protection is not sought early in the innovation process? The theft of intellectual property by countries like China and the enormous cost and expense of enforcement to protect IP. AIA simply makes that more difficult for small businesses.

With the introduction of "first-to-file" (FTF) it forces small companies to divert their attention and resources from research and development, finding customers, and growing their business to filing numerous, often wasteful patent applications both domestically and internationally. Under AIA small companies will now need to file multiple applications as their R&D progresses to protect a multitude of ideas, only a few of which will ultimately work. For a small company this will be a huge distraction and cost since seeking patent protection is an expensive and time-consuming activity. Passage of F-T-F was a huge disservice to America's small

businesses!

4. What specific role does international patent protection play in the successful internationalization strategies (such as franchising, exporting, or foreign-direct-investment) of small businesses? Does this role differ by industry or sector?

Since countries like China are engaged in "unfair trade practices," protecting their domestic industries, manipulating their currency, American businesses (and I don't mean IBM, Intel, MICRON and GE which employ more people overseas than in the US and are no longer American companies) need some sort of protection from our government.

However, AIA makes patent protection more difficult and more expensive for small businesses, not less.

5. How can the USPTO and other Federal agencies best support small businesses regarding international patents:

(a) In obtaining international patent rights?

Create one single, simplified, streamlined, and more flexible filing and prosecution process for small and micro entities.

Provide a 'one filing' patent system for small businesses and inventors.

Provide an agency to enforce patents held by small-entity US patentees for them.

Suggest to Congress that they repeal AIA and return to "First to Invent."

(b) In maintaining international patent rights?

Create one single, simplified administrative procedure for maintaining US and foreign patent rights.

(c) In enforcing international patent rights?

Create one single, simplified administrative procedure for enforcing US and foreign patent rights instead of the endless, costly multitude of Ex parte reexam, Inter parte review, PGR, Sec. 18 Transitional Program, and judicial proceedings. All these challenges greatly diminish the value of patents and discourage innovation.

Create and fund a Government agency to 'prosecute' alleged infringement of small entity held US patents.

Provide penalties including treble damages for infringement and make rules for recovery of costs for the costs of enforcement including legal fees.

6. What role should the Federal Government play in assisting small businesses to defray the costs of filing, maintaining, and enforcing international patent protection?

Create a highly simplified 'one-file' system where a small business can file once in the US that automatically takes effect world-wide. This multi-filing, multi-rule system is an absurd burden on small businesses and inventors.

Create an agency that enforces patents held by small-entity US nationals for them.

Provide incentives for small-entity US nationals to "practice" their inventions in the US.

7. In order to help small businesses pay for the costs of filing, maintaining, and enforcing international patent applications, how effective would it be to establish a revolving fund loan program to make loans to small businesses to defray the costs of such applications, maintenance, and enforcement and related technical assistance? Hugely effective!

(a) Under what specific circumstances, if at all, would such a fund be effective at helping small businesses?

If it were a streamlined, simplified, or even automatic process. The less paperwork, the better. If the amount of funding was meaningful.

(b) If such a fund would be effective, should the fund be maintained by the Federal Government, and if so, through what mechanism?

Create an agency, insulated from political pressure, run by true small entity inventors to manage such a fund.

(c) What criteria should be used to decide upon recipients of funding?

Any small entity (500 employees or less). Make the loan proportion to the potential value of any particular patent; the more potentially valuable, the bigger the loan... obviously.

(d) Could the private sector be meaningfully involved in maintaining and implementing such a fund?

Make absolutely sure that the politicians and big corporations are in NO way involved in maintaining and implementing such a fund; big corporations want to destroy small inventors and are anathema to small patent owners.

Invite 'co-investment' by proven private venture capitalists provided they do not control the invention. Venture capitalists could help 'leverage' such a fund.

Big businesses like IBM and Microsoft pay far too little in PTO fees in proportion to their size and financial resources. Substantially increase PTO fees for large corporations to help fund; it is fair and they can afford it.

8. In order to help small businesses pay for the costs of filing, maintaining, and enforcing international patent applications, how effective would it be to establish a grant program to defray the costs of filing applications, paying maintenance fees, and conducting enforcement and to provide related technical assistance? Huge. Grants would be even better, obviously. Small inventors and businesses typically desperately need capital. Since the patent process and the value of patents are subject to so much uncertainty, the system is a huge deterrent to innovation.

(a) Under what circumstances, if at all, would such a program be effective at helping small businesses?

If the amount of money was really meaningful; if the criteria were meaningful instead of like the absurdly low, income criteria being used in the PTO's new 'pro bono' program. If you want to give money to poor people, do so. If you want to give money to inventive and creative people, make it effective and meaningful.

(b) If such a grant program would be effective, should the program be maintained by the Federal Government, and if so, through what mechanism? What type of grant program, covering what specific costs, would be most effective?

Such a grant program should be run by a non-politicized entity run by successful, true small-entity inventors. Make it self-sustaining with grants being made on a profit sharing basis with small inventors so that if a patent is successful, the fund shares in the profits.

Give the fund the discretion to fund any costs that would make the invention an economic reality; much the way 'venture capitalists do.'

(c) What criteria should be used to decide upon recipients of grants?

Make the 'grants' an investment, not just a gift.

Breakthrough inventions and inventions which have large economic and/or social value.

Make it a condition that recipients 'practice' their invention to create employment and economic growth in America.

(d) Could the private sector be meaningfully involved in maintaining and implementing such a program?

Absolutely! It should be run by credible, honest and successful small inventors and businesses who have "walked the walk."

9. If the Federal Government is limited to providing either (i) A revolving fund loan program or (ii) a grant program described above, but not both, which of these options would be more effective in accomplishing the outcome of helping small businesses pay for the costs of filing, maintaining, and enforcing international patent applications?

Obviously a well-run grant program run on an 'investment/profit sharing basis.' The fund could be not only self-sustaining, it could be highly profitable, both monetarily as well as socially.

10. Are there circumstances under which the Federal Government should not consider establishing any of these programs?

If it's under-funded, politicized or run by people who don't know what they are doing, or if the amounts of funding are inconsequential.

Respectfully submitted,

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