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March 17, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United Sates Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

The International Trademark Association is aware of a position being taken by the U.S. Patent and Trademark Office (USPTO) about potential legislation that would dismantle the "fence" [see 35 U.S.C. 42 (c)] enacted by Congress in 1982 to protect the fees paid by trademark registration applicants. The fence acknowledges that these are true user fees, paid by trademark owners for the processing of *their* applications. The USPTO seeks, we understand, to divert trademark funds to patent operations in order to remedy an immediate shortfall in their funding.

This is not the first time that we have been concerned about the integrity of the trademark fence. Despite only a modest surplus, the Trademark Office (whose budget is less than 1/10th that of the Patent Office) has increasingly become a target. The Trademark Office has repeatedly been asked to assume a disproportionate portion of its shared overhead, which is a less direct path than the USPTO is now suggesting.

As you know, Congress put an end to the practice of fee diversion in 2004, after almost twelve years during which USPTO fees were directed elsewhere to meet the needs of other agencies. Trademark and patent owners had sought to ensure that these fees were used exclusively to offset the costs of processing their trademark and patent applications. The intellectual property rights community and notably trademark owners have consistently supported the USPTO in securing and then maintaining an end to diversion in order to protect the agency's operational capabilities. This new proposal is a breach of faith with trademark rights owners and inappropriately shifts costs within the USPTO.

During difficult economic times, as filings by trademark applicants decline, the Trademark Office, as a matter of prudence, has an even greater need to retain its own funds, even in years when they exceed the projected cost of operations. This ensures that the Trademark Office can keep experienced examiners in place and thereby preserves the agency's institutional expertise. Further, any reserve may prove necessary as the USPTO's information technology systems are rehabilitated after years of maladministration. Finally, a surplus provides insurance against further economic downturns, a comfort level that trademark owners have paid for with their fees.

INTA is grateful to you for your work on the issue of diversion and greatly appreciates your attention to our views on this matter.

Sincerely,

Alan C. Drewsen
Executive Director
International Trademark Association

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