

Updates on Patent Law Reform and USPTO Funding

Patent Reform:

Plans for the Senate to take up next week H.R. 1249, the patent reform bill passed by the House on June 23, appear to have been abandoned.

Because of the dominance of the debt ceiling and budget issues in the attention the Senate, it was felt that some senators may object to Senate consideration of any other matter until action on those matters has been taken. Judiciary Committee Chairman Patrick Leahy, who would like for the Senate to pass the House bill without further amendment, is still hoping to have the Senate act on H.R. 1249 before the month-long August recess.

USPTO Funding:

ON July 7, the Commerce, Justice State Subcommittee of the House Appropriations Committee approved the PTO funding bill for Fiscal Year 2012. The bill provides for funding of the PTO in the amount of \$2,706,313,000, the amount requested in the president's budget. Included in this amount are funds expected to be collected by the imposition of a 15% surcharge on patent fees that the bill would establish. The surcharge would take effect 10 days after enactment of the appropriations bill, and terminate at the end of the fiscal year.

The bill also contains language designed to make available to the PTO without further appropriation all fees collected above the base appropriation of \$2.706 billion, should actual collections exceed this estimate. These additional funds would be made available through a process whereby the Office submits to the two Appropriations Committees of Congress its plans for use of the additional funds. The plan must comply with rules established by the appropriators for use of such excess funds. The Chairman of the House Appropriations Committee agreed to include these provisions in the FY 2012 appropriations bill as part of the compromise that resulted in the removal from the H.R. 1249, the patent reform bill, of provisions that would make fee collections immediately available to the Office, without requirement of any appropriation. This additional language in the funding bill is represented by the appropriators as guaranteeing that there will be no diversion. In this regard, the opening remarks of Subcommittee Chairman Frank Wolf at the markup included the following statement:

"The bill includes \$2.7 billion for the Patent and Trademark Office -- the full estimate of fee collections for FY12 -- and a 28 percent increase above FY11. Should PTO

collect additional fees above the amount appropriated, the bill makes that excess available to PTO."

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