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March 26, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing on behalf of the Section of Intellectual Property Law of the American Bar Association to express our support for Senate consideration and approval of the bipartisan Amendment in the Nature of a Substitute for S. 515, which you and other senators announced on March 4, 2010. These views have not been submitted to the House of Delegates or Board of Governors of the ABA, and should not be construed as representing policy of the Association.

On April 2 of last year, the Judiciary Committee ordered favorably reported S. 515, the Patent Reform Act of 2009. Shortly thereafter, on April 21, 2009 we wrote to the Majority Leader, expressing our support for the bill as reported and urging Senate consideration and approval of the bill. We today reaffirm that support for S. 515 as embodied in the Amendment in the Nature of a Substitute. This bipartisan compromise contains numerous improvements in U.S. patent laws, including enhanced patent quality through procedures for third-party pre-issuance submission of prior art, improved efficiencies by utilizing an ABA-supported first-inventor-to-file system, improved patent quality by providing a fair and cost-effective post-grant review procedure, and clarification of the gate-keeping responsibilities of district courts in determining damages.

The bill before you is the product of five years of study and development within the Judiciary Committee, and we commend you for your commitment and sustained attention to the effort. By necessity, it contains a number of provisions that are the result of negotiation and compromise. No doubt there are provisions that each of you and the other co-sponsors would prefer to have been addressed in a different manner. We too would have addressed some issues differently. However, as we noted in our letter to the Majority Leader, the perfect should not be the enemy of the good, and this is a good bill, perhaps the best possible. Its enactment would substantially improve the patent system of the United States, and we support that enactment.

Sincerely,



Don W. Martens
Chair
Section of Intellectual Property Law