

December 21, 2001

The Honorable Howard Coble  
Chairman, Subcommittee on  
Courts, The Internet, and  
Intellectual Property  
Committee on the Judiciary  
United States House of  
Representatives  
Washington, DC 20515

The Honorable Howard Berman  
Ranking Minority Member  
Subcommittee on Courts, the  
Internet, and  
Intellectual Property  
Committee on the Judiciary  
United States House of  
Representatives  
Washington, DC 20515

Dear Chairman Coble and Ranking Member Berman:

This letter is written on behalf of the Section of Intellectual Property Law of the American Bar Association to express our concern about provisions of S. 320, as amended by the Senate on November 15 and sent to the House, which would establish three additional presidential appointments in the United States Patent and Trademark Office (PTO). 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.

The November 15 Senate amendment calls for the President to appoint in the PTO a Deputy Under Secretary of Commerce for Intellectual Property and Deputy Commissioner of the USPTO, a Special Counsel for Intellectual Property Policy, and a Deputy Commissioner for Legislative and International Affairs. The first of these three positions was established under the American Inventors Protection Act (AIPA) as an appointment of the Secretary of Commerce, but the position has not been filled. The other two positions are new.

We are concerned that these changes in the top management structure of the PTO would unduly diminish the authority and responsibility of the Under Secretary of Commerce for Intellectual Property for the management and direction of the PTO, as carefully crafted in the AIPA and enacted only two years ago. The Senate amendment provides for no role by the Under Secretary in the selection of these three officers, which would reduce his ability to manage the Office. Even more troublesome, the amendment would provide for the removal by the President of the Special Counsel for Intellectual Property Policy and the Deputy Commissioner for Legislative and International Affairs.

Provision for removal by the President suggests that removal can be only by the President. The result would be that these officers who would be, as called for by the Senate amendment, “the chief intellectual property policy advisor” and “the chief advisor on all congressional and international matters”, could not be held accountable by the Under Secretary they are advising. These functions are currently performed by the Commissioner for Patents, the Commissioner for Trademarks, and the Director of the Office of Legislative and International Affairs, all of whom are accountable to the Under Secretary under the provisions of the AIPA.

To our knowledge, these significant changes in the management and direction of the PTO have not been recommended by the PTO, the Department of Commerce, or the Administration, and they are not the product of congressional hearings and oversight of the PTO. More than that, we believe they are contrary to good management common sense. We are therefore convinced that enactment of these changes would be contrary to the interests of the sound, efficient, and effective operation of the PTO, and we urge you to reject them.

Sincerely,

A handwritten signature in black ink that reads "Charles P. Baker". The signature is written in a cursive style with a large, prominent "C" and "B".

Charles P. Baker  
Chair  
Section of Intellectual Property Law

cc: Honorable F. James Sensenbrenner  
Honorable John Conyers  
Robert D. Evans  
Lillian B. Gaskin  
IPL Section Officers