

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

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The Honorable Patrick J. Leahy Chairman Committee on the Judiciary U.S. Senate Washington, D.C. 20510	The Honorable Arlen Specter Ranking Member Committee on the Judiciary U.S. Senate Washington, D.C. 20510
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Dear Chairman Leahy and Ranking Member Specter:

We understand that during the consideration in the Committee in the next few days of S. 515, the Patent Reform Act of 2009, an amendment may be offered by Senator Coburn to ensure that all fee revenue of the U.S. Patent and Trademark Office (PTO) will be made available to the Office for its use in providing services for which the fees were paid.

I am writing to express the support of the American Bar Association for the enactment of this amendment.

The Omnibus Budget Reconciliation Act of 1990 substantially raised PTO fees to enable the Office to function entirely on user fee collections. Since then, the Office has received no public funds. However, short-term financial pressures have frequently resulted in appropriations legislation that does not provide the PTO with authority to spend all of the fees it has collected. Rather, some fees have been diverted to fund other governmental operations. Such diversion, which in some years reached almost \$100 million, creates funding shortfalls and uncertainty with profound negative effect upon PTO effectiveness.

The American Bar Association determined that such fee diversion drained away essential resources from the PTO and threatened the capacity of the agency to effectively operate the patent and trademark systems that are critical to the U.S. economy. In response, the ABA House of Delegates adopted policy urging Congress to enact legislation to prohibit such fee diversion and to guarantee that all PTO fee revenue is used to provide services for which the fees were collected.

The Coburn amendment would establish a revolving fund into which the PTO would place all patent and trademark fees and from which it would be able to withdraw funds for its operations without any additional annual appropriations. A nearly identical amendment was approved by the Committee in S. 1145, 110th Congress, and included in the bill as reported in the Senate.

We believe that adoption of this amendment would provide a significant structural protection against future diversion, and we strongly urge its enactment.

Sincerely,



Thomas M. Susman