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President

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February 4, 2011

The Honorable Frank Wolf
Chairman, Subcommittee on Commerce,
Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Chaka Fattah
Ranking Member, Subcommittee on Commerce,
Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Ranking Member Fattah:

As you address the difficult task of determining the appropriate level of funding for the governmental entities within the responsibility of the Subcommittee, I write to express the concerns and recommendations of the American Bar Association concerning the unique circumstances of one of those agencies, the U.S. Patent and Trademark Office.

Let me begin by thanking you for your sustained bipartisan support for providing the funding necessary to maintain this agency that is so important to our nation's economic vitality and global competitiveness. The USPTO is, of course, operated entirely on user fee collections, with no taxpayer funds. In a number of years beginning in the early 1990s, the annual appropriation for the agency provided something less than 100% of the fees collected. For the past six years your Subcommittee has taken the lead in ending that practice by the enactment of appropriations that provide full funding of the USPTO, in the amounts requested in the president's budget and equal to projected fee collections. Significantly, that practice of full funding is reflected in the FY 2011 appropriation bill approved by your Subcommittee and by the full Committee, which would provide \$2.322 billion for the operation of the USPTO. We support that level of funding for the Office.

As you are aware, a combination of events has produced the present dire circumstances in which the Office must operate on funding that is more than \$1 million less *per day* than the full funding that your Subcommittee and the Congress have found is needed. This perfect storm began to gather when the Office underestimated its fee collections in FY 2010, and, as a result, the

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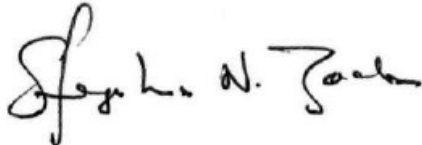
appropriations for FY 2010 did not include some \$50 million in additional collections. This necessitated operating to date in FY 2011 on a series of short-term continuing resolutions that follow the general rule of restricting agency spending to levels provided in the previous year's appropriation. In the case of the USPTO this produced an unrealistically lower level of spending authority, based on underestimating fee collections for 2010. Also contributing to this storm is that in FY 2011 fee collections, and the corresponding workload of the Office, continue to rise, but the Office has no access to those additional funds under the continuing resolution funding mechanism.

Since PTO fee collections are directly tied to the workload of the agency, we strongly urge the inclusion in the appropriation for the USPTO of an appropriate "buffer" provision that would make available to the Office actual fee collections that exceed the amount provided in the appropriation. The amounts appropriated are based on the best estimates of the USPTO, which are necessarily made well in advance of the actual collections over the span of the fiscal year. While the Office is always scrupulous in making these estimates, and usually quite accurate, we believe that some such buffer provision is needed to insure that all the fees paid by users of USPTO services are available to provide those services.

To continue for the remainder of the fiscal year the formula for funding the Office under the existing continuing resolution would be to court disaster. The resulting underfunding of the agency by some \$400 million would certainly necessitate massive layoffs of personnel and cessation of essential technological improvements in the Office. This would trigger a downward spiral in productivity and quality of our patent and trademark systems, with crippling effects on the engines of innovation, investment, and job creation that drive our nation's economy and improve the lives of our citizens.

Thank you for your consideration of our views. The ABA stands ready to work with you and the Subcommittee to ensure that the PTO will continue to play its critical role in advancing innovation and competitiveness

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen N. Zack". The signature is written in a cursive, flowing style.

Stephen N. Zack

President

American Bar Association