June 23, 2011

Dear Representative:

When the House resumes consideration this afternoon of H.R. 1249, the “America Invents Act,” the first vote will be on a manager’s amendment to the bill. Because the manager’s amendment would eliminate an essential component of the bill as reported by the Judiciary Committee by a vote of 32-3, the American Bar Association urges a No vote on the amendment.

The U.S. Patent and Trademark Office (PTO) is funded entirely by user fees. No taxpayer dollars are involved. To guarantee that the fees paid by the PTO’s customers are available to the Office in a certain and timely manner, the bill as reported would channel PTO user fees, in effect sales receipts, into a special fund that would be immediately available to pay the Office’s bills. The manager’s amendment would eliminate this guarantee of certainty and stability in providing paid-for resources to the Office, and relegate the flow of funds to operate our nation’s patent system to the existing system of delay and diversion. In the past several years, that system has resulted in more than $700 million of fees paid to the PTO never reaching the Office for use.

The problem of denial, delay, and uncertainty in PTO access to its user fees is real, ongoing, and extremely damaging to invention and innovation in the United States. Less than three months ago, when final funding for this fiscal year left more than $70 million dollars unavailable to the PTO, the Director found it necessary to immediately cut services drastically, including the cancellation of the launch of a new program to provide accelerated review and issuance of patents for promising new inventions.

Results such as this would be ended by H.R. 1249 as reported and S. 23, a companion bill already passed by the Senate. Rejection of the manager’s amendment would retain this solution and facilitate expeditious reconciliation of H.R. 1249 with the Senate-passed bill. We urge a No vote on the manager’s amendment.

Sincerely,

Thomas M. Susman