

December 14, 2015

The Honorable Penny Pritzker  
Secretary  
United States Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

The Honorable Michelle Lee  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office  
United States Patent and Trademark Office  
600 Dulany Street  
P.O. Box 1450  
Arlington, VA 22313

Dear Secretary Pritzker and Under Secretary Lee:

I am writing on behalf of the American Intellectual Property Law Association (“AIPLA”) regarding the U.S. Patent and Trademark Office’s (“USPTO”) possible participation in a Department of Commerce initiative to utilize shared services for human resources, information technology (“IT”) and procurement functions.

AIPLA is a national bar association of approximately 14,000 members who are primarily lawyers engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

Under Secretary Lee announced the shared services initiative during the August 20, 2015, Patent Public Advisory Committee (“PPAC”) Meeting. After the initiative was announced, several PPAC Members raised concerns, questioning how priorities for one organization will be shared across multiple organizations.<sup>1</sup> AIPLA shares these concerns and questions whether shared services from another agency will be capable of meeting the USPTO’s unique needs. As noted in the 2015 PPAC Annual Report, “[m]any of the USPTO support services are tailored to unique

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<sup>1</sup>Patent Public Advisory Committee Meeting Tr. at 12, Aug. 20, 2015,  
[http://www.uspto.gov/sites/default/files/documents/PPAC\\_Transcript\\_20150820.pdf](http://www.uspto.gov/sites/default/files/documents/PPAC_Transcript_20150820.pdf).

USPTO needs and already function at levels above what is sometimes achieved within the federal government. It is possible that if a comprehensive shared services infrastructure is developed for the U.S. Department of Commerce, many significant components will not meet the needs of the USPTO.”<sup>2</sup>

Additionally, if a shared services initiative is implemented, some administrative decision-making regarding human resources, information technology, and procurement functions would no longer reside with the USPTO Director, and instead would be committed to other executives within the Department of Commerce. We are concerned that this would run afoul of the American Inventors Protection Act (“AIPA”)<sup>3</sup> with respect to the USPTO Director’s authority over these administrative functions. This initiative has the potential to have a negative impact on USPTO operations, and thus American innovation, because these functions would be managed by executives who would not report to the USPTO Director and who might not have the interests of the USPTO as their only and top priority.

AIPLA also notes that the Leahy-Smith America Invents Act (“AIA”) requires that all fees collected by the USPTO be used for the expenses of the Office.<sup>4</sup> AIPLA is concerned that this shared services initiative may divert user fees to other areas within the Department of Commerce. As the PPAC Annual Report states, “[t]he PPAC believes that if the USPTO were to adopt a shared services infrastructure that is not in alignment with its needs or objectives and thus consequently not useful, such would be a form of fee diversion. It would also compromise the core goals of improving quality and reducing pendency.”<sup>5</sup> User fees that the USPTO collects should not be used to support the Department of Commerce’s priority projects since those projects may conflict with the unique needs and requirements of the USPTO.<sup>6</sup> Our members, together with the intellectual property community at large, fought hard for many years, and especially during the passage of the AIA, to ensure that the USPTO is better able to retain and control the expenditure of its user fees.<sup>7</sup> Given the importance of our intellectual property system

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<sup>2</sup> Patent Public Advisory Committee, U.S. Patent and Trademark Office, *2015 Annual Report 26-27* (2015), available at [http://www.uspto.gov/sites/default/files/documents/PPAC\\_2015\\_Annual\\_Report.pdf](http://www.uspto.gov/sites/default/files/documents/PPAC_2015_Annual_Report.pdf).

<sup>3</sup> American Inventors Protection Act (AIPA), Pub. L. No. 106-113.

<sup>4</sup> Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29 §22(3)(A).

<sup>5</sup> Patent Public Advisory Committee, U.S. Patent and Trademark Office, *2015 Annual Report 26-27* (2015).

<sup>6</sup> Patent Public Advisory Committee Meeting Tr. at 13, Aug. 20, 2015.

<sup>7</sup> AIPLA Letter to the House on USPTO Revolving Fund, Section 22 in HR 1249, June 9, 2011, available at <http://www.aipla.org/advocacy/congress/112C/Documents/Letter-to-House-on-PTO-RevolveFundinHR1249-June%202011.pdf>; AIPLA Letter to U.S. House Judiciary Committee Regarding Section 22 of Manager’s Amendment to H.R. 1249, June 22, 2011, available at <http://www.aipla.org/advocacy/congress/Documents/AIPLA%20Letter%20to%20House%20Judiciary%20on%20Section%2022%20,%20H.R.%201249-6.%202011.pdf>;

AIPLA Letter to the U.S. House in Support for Funding the USPTO in the Continuing Resolution, Sept. 21, 2011, available at <http://www.aipla.org/advocacy/congress/Documents/AIPLALettertoHouseonUSPTOFundinginCR-September2011.pdf>; AIPLA Letter to the U.S. Senate in Support for Funding the USPTO in the Continuing Resolution, Sept. 26, 2011, available at <http://www.aipla.org/advocacy/congress/Documents/AIPLALettertoSenateonUSPTOFundinginCR-September2011.pdf>.

as a key driver of innovation, economic growth, and job creation, user fees paid by innovators should be used to maintain and improve the that system.

We urge you to give this matter further consideration prior to any decision to implement this shared services initiative. At a minimum, we request that you study its effect on USPTO operations with hearings open to the public and a request for comments. This level of public participation is the minimum necessary to further President Obama's mandate that Federal Agencies and Departments "will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration."<sup>8</sup> We seek such participation and collaboration here.

We thank you in advance for considering these comments.

Sincerely,



Denise W. DeFranco  
President  
American Intellectual Property Law Association

cc: Bruce H. Andrews, Deputy Secretary of Commerce  
Russ Slifer, Deputy Under Secretary of Commerce for Intellectual Property and Deputy  
Director of the United States Patent and Trademark Office

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<sup>8</sup> Transparency and Open Government Memorandum issued by the President to Heads of Executive Departments and Agencies, [https://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment](https://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment).