

May 3, 2004

The Honorable Bill Frist
Majority Leader
United States Senate
S 230 Capitol Building
Washington, DC 20510-7010

Dear Senator Frist:

I am writing to express the strong support of the American Bar Association for the enactment of H.R. 1561, a bill to provide for the continued financing of the U.S. Patent and Trademark Office (USPTO) entirely by user fees, and to guarantee that all revenue from such fees is used exclusively to fund the agency.

Patents and trademarks encourage and support invention, innovation, and investment. For American inventors and high technology innovators to compete in the world economy, it is essential that the USPTO act promptly and accurately on applications for patents and trademarks. Unfortunately, this is not happening. The agency has a backlog of almost half a million unopened patent applications, and the trend suggests even worse to come. The PTO projects that the time it takes to obtain a patent, which now averages over two years, will nearly double in the next few years. The quality of patents issued is diminishing, leading to legal uncertainty, costly litigation, and crippling delays in development and marketing.

Insufficient funding for the USPTO is a prime factor in these problems. User fees paid to the agency should be adequate to fix the problems, and the PTO's customers have expressed willingness to pay more if needed. However, for a decade Congress has failed to allow the PTO to use all of its collections. In these ten years, more than \$650 million have been diverted to fund other programs.

H.R. 1561 as passed by the House and reported by the Senate Judiciary Committee is a comprehensive and effective bipartisan response to the funding needs of the USPTO. It would produce the revenue requested by the Administration to carry out the USPTO's reform plans, and guarantee that none of that revenue is diverted to fund unrelated programs.

Three years ago, the American Bar Association recognized the need for legislation such as H.R. 1561, and called on Congress to end PTO user fee diversion. At the beginning of the 108th Congress, we found that need to have grown even more critical, and identified the need to stop PTO user fee diversion as one of the Association's twelve highest legislative priorities. We believe that H.R. 1561 would do the job, and urge that the Senate approve the bill as expeditiously as possible.

Sincerely,

Dennis W. Archer