Patent Office Professional Association
Box 25287, Alexandria, VA 22313

November 18, 2013

Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

The Patent Office Professional Association (POPA) represents more than 8,000 patent examiners and other patent professionals at the U.S. Patent and Trademark Office (USPTO). While POPA appreciates the work of the Committee in preparing a Manager's Amendment to the Innovation Act, H.R. 3309, for Committee mark-up, we continue to have concerns regarding this legislation.

First and foremost is the failure of this legislation to address in any way the lack of stable funding for the USPTO and the impacts of sequestration on the Agency's abilities to carry out its mission. The Leahy-Smith America Invents Act of 2011 (AIA) gave the USPTO limited fee-setting authority and the access to all its fee income. No sooner had the first fee-setting rule been implemented, however, than the Agency became subject to a substantial loss of that fee income through sequestration. No attempt has been made in H.R. 3309 to resolve this issue.

Until such time as the USPTO is provided stable and full fee funding, POPA must oppose this legislation.

POPA greatly appreciates the removal of the provisions of H.R. 3309 regarding expansion of the transitional covered business method (CBM) provisions of the AIA. It is noted, however, that the proposed legislation authorizes the Director to waive the payment of fees for a transitional proceeding under the CBM provisions of the AIA. POPA opposes this provision. Permitting the Director to waive this fee would simply act to further incentivize challenges to issued U.S. patents on covered business methods and decrease the certainty of patent owners and investors in the value of the patent. A strong U.S. patent system must provide some certainty to patent owners once their patent has survived legal challenge. Without that certainty, the incentives of the patent system become illusory. Furthermore, with its current unstable funding, it is entirely unclear how the USPTO could afford to waive fees for such a proceeding. The USPTO needs its fees to cover the expense of the work performed for those fees. Indeed, under current fee setting authority, fees are set, on average, to recover costs of the Agency's activities. Waiving a fee for a CBM transitional proceeding would appear ill-advised at best.

Of broader general concern for POPA is that the Innovation Act appears skewed against small inventors. POPA has always supported small inventors, recognizing that it is these very inventors who do the majority of true innovation – whether in their garage, small company or university laboratory. While others are much better able to delve into the specifics of those provisions affecting small inventors, POPA believes that any changes to the U.S. patent system should work to advantage, not disadvantage, small inventors. They represent the very lifeblood of American innovation.

Finally, we are deeply concerned that this legislation is being pushed through the legislative process much too quickly to allow adequate development of the issues and crafting of solid, workable solutions to resolve those issues. POPA hopes that the Committee will continue discussions with stakeholders until the interests of all have been adequately addressed. We look forward to continuing to work with the Committee on crafting patent reforms that will keep America's patent system the strong and vibrant engine of innovation it has been for over two hundred years. We would be happy to discuss with you any questions you may have.

Sincerely,

/Robert D. Budens/

Robert D. Budens, President
Patent Office Professional Association
571-272-0897
robert.budens@uspto.gov