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U.S. Patent and Trademark Office Appropriations Process: A Brief Explanation

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Summary

The United States Patent and Trademark Office (USPTO) is funded by fees collected from customers. However, appropriation measures limit USPTO use of all fees accumulated within a fiscal year. Critics of this approach argue that because agency operations are supported by payments for services, all fees are necessary to fund these services in the year they are provided. Some experts claim that a portion of the patent and trademark collections are being used to offset the cost of other, non-related programs. Proponents of current funding methods maintain that the fees appropriated back to the USPTO are sufficient to cover the agency's operating budget.

Background and Analysis

Traditionally, the United States Patent and Trademark Office (USPTO) was funded through annual appropriations legislation. In 1982, the fees charged to customers for the application and maintenance of patents and trademarks were increased significantly to pay the costs associated with the administration of such activities. Funds generated by the fees were considered "offsetting collections" and provided to the USPTO on a dollar-for-dollar basis through the appropriations process. Additional appropriations, above the fees collected, were made to support other operating costs.

The Patent and Trademark Office became fully fee funded as a result of P.L. 101-508, the Omnibus Reconciliation Act (OBRA) of 1990, as amended by P.L. 103-66. The intent of the legislation was to reduce the deficit; one aspect of this approach was to increase the fees charged customers of the USPTO to cover the full operating needs of the institution. A "surcharge"of approximately 69% was added to the fees the Office had statutory authority to collect. These additional receipts were sent to a special fund in the Treasury established under the budget agreement. The funds collected through the surcharge were considered "offsetting receipts" and were defined as offsets to mandatory spending. However, the spending of those receipts was controlled by the appropriation acts, considered discretionary funding, and counted against the caps under which the Appropriations Committee operated. The money generated through the basic fee structure

continued to be designated as "offsetting collections" and also subject to spending limits placed on the Appropriations Committee. During the 8 years the OBRA provisions were in effect, it has been estimated that the USPTO collected $234 million more in fees than the budget authority afforded to the Office.[1] Another estimate suggests that between FY1991 and FY1998, the USPTO collected $338 million more in discretionary and mandatory receipts than the Office had the authority to spend.[2]

The surcharge provision expired at the end of FY1998. In response, Congress increased the statutory level of the fees to cover the operations of the USPTO (P.L. 105-358). Currently, all funds raised by fees are considered "offsetting collections" and are counted against caps placed upon the appropriators. According to recent appropriations language, the budget authority provided to the USPTO comes from a portion of the funds collected in the current fiscal year plus funds carried over from previous fiscal years. Until FY2001, the carry-over was created when the annual appropriations legislation established a "ceiling" and limited the amount of current year collections the Patent and Trademark Office could spend. Additional funds were not to be expended until subsequent fiscal years. However, in FY2001, this latter provision was eliminated. Fees generated above the ceiling may be used by appropriators to offset programs not related to the operations of the USPTO. The budget authority provided the USPTO has been less than the total amount of fees collected within each fiscal year.

Proponents of this approach to funding the USPTO claim that despite the ceilings imposed on spending current year fee collections, when combined with fees carried over from previous years, the Office is provided with sufficient appropriations to operate. However, many in the community that pay the fees to maintain and administer intellectual property disagree with this assessment. Critics argue that, over time, a significant portion of the fees collected are not returned to the USPTO due to the ceilings established by the appropriations process and the inability of the Office to use the fees on a dollar-for-dollar basis. They maintain that all fees are necessary to cover actual, time-dependent activities at the USPTO and that by withholding funds, the efficient and effective operation of the Office is diminished.

Advocates of current funding practice see it as a means to provide necessary support for other programs in the relevant budget category given budget scoring and the caps placed upon the Committee on Appropriations (Commerce, Justice, State, the Judiciary, and Related Agencies Subcommittee). For example, during House debate on the FY2001 appropriations bill (H.R. 4690), several Members argued that funding for the Bureau of the Census, the Department of Commerce Bureau of Economic Analysis, and/or the Department of State Educational and Cultural Exchange program (among others) would have to be cut significantly in order to permit the USPTO to use all fees collected given the 302(b) allocations provided to the Subcommittee.

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[1] Michael K. Kirk, Executive Director, American Intellectual Property Law Association. Testimony before the House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property, March 9, 2000.

[2] Estimate based on the Presidential Budget Appendices for FY1991 through FY2000.