GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

July 11, 2008

The Honorable Patrick Leahy
Chairman, Committee on Judiciary
United States Senate
Washington, D.C. 20510-0675

The Honorable Arlen Specter
Ranking Member, Committee on Judiciary
United States Senate
Washington, D.C. 20510-0675

Dear Chairman Leahy and Senator Specter:

This letter provides the views of the Department of Commerce on H.R. 6344, the Responsive Government Act of 2008, as passed by the House on June 23, 2008.

The Administration strongly opposes enactment of H.R. 6344 on the basis of the inclusion of the provisions of section 4, as currently drafted. Section 4 provides a means of special relief, upon payment of substantial fees, for a limited number of identifiable patent owners who have made unintentional, untimely filings for an extension of patent term under section 156 of title 35. Further, section 4(b)(2)(A)(i) assesses a specific fee of $65 million, payable to the United States Treasury, to a particular patent holder should a petition filed under section 4 result in extension of the term of the subject patent. This fee is intended to compensate the U.S. Government, but not the consuming public and insurers, for higher costs in health care programs due to this patent extension. The Administration opposes legislative proposals that involve retrospective, targeted exceptions to patent regulations and laws. Moreover, the Administration has not identified a need for the type of administrative discretion established by section 4 of H.R. 6344.

We note, however, that the Administration supports provisions of this legislation that would provide authority to Federal courts and the United States Patent and Trademark Office to exercise appropriate discretion in the event of a natural disaster or other emergency situation that makes it impracticable for citizens to comply with various statutory and administrative deadlines. The provisions of section 3 of H.R. 6344 are narrowly drawn to allow appropriate waivers necessary to protect the rights of applicants for, and owners of, patents and trademarks. Further, while the Administration generally supports the provisions of section 2 regarding comparable authority for certain Federal courts, we believe those provisions should be revised and improved in terms of scope and administrative considerations.

We have been advised by the Office of Management and Budget that there is no objection to the submission of these views from the standpoint of the Administration's position. If you have any questions, please contact me or Nathaniel F. Wienecke, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Very truly yours,

Lily Fu Claffee

cc: The Honorable Harry M. Reid
Majority Leader

The Honorable Mitch McConnell
Minority Leader