

July 13, 2011

The undersigned organizations would like to express our appreciation to USPTO for the continued opportunity to comment on the proposed program to “Incentivize Humanitarian Technologies and Licensing through the Intellectual Property System.” We previously submitted comments on this proposed pilot program on November 19, 2010 and on March 4, 2011.

The USPTO has further contacted us with the following questions:

“1. We really want to maximize the publicity value of the awards. This advances a major goal of the program: showcasing positive examples of patent holders addressing humanitarian issues without sacrificing commercial markets. To this end, we're considering making awards once a year instead of twice. This should increase the splash factor.

2. Because this is a new area for USPTO, we respect stakeholders' concerns and want to proceed cautiously. One option would be to offer a non-transferrable voucher incentive that recipients can use to accelerate their own patent cases, but not transfer to others.

How much would either of these changes affect your interest or ability to participate in the program?”

As we addressed in our previous comments, we are supportive of USPTO's efforts to introduce innovative incentive mechanisms to promote the development and widespread distribution at affordable prices of technologies that address the needs of people living in developing countries.

In order to ensure the effectiveness of this program, we believe that it is important that the proposed vouchers have significant economic value and that they create incentives for truly humanitarian initiatives. The mechanism should therefore limit the number of vouchers awarded and allow transferability.

Number of prizes granted & minimum standards

We have no common view on the timing of the voucher awards.

We do have a common view that the number of vouchers awarded each year should be limited.

As we detailed in earlier submissions, we support a system where the applications for vouchers must meet minimum public interest standards. In the event that none of the applications meet the minimum standards in a given year, USPTO should not be mandated to grant a voucher and the competition should be considered deserted. Only deserving applicants whose proposals are truly responsive to the needs of developing countries and disadvantaged populations should be awarded a voucher. For example, the promotion of a new medical technology that is not affordable or not adapted to the medical and operational needs of people in developing countries should not be considered as deserving the voucher.

By limiting the number of vouchers and awarding them only to truly meritorious applications, the USPTO will increase the humanitarian impact of the program..

Transferability of Vouchers

In order to enhance the value of the voucher and the impact of the proposed program, the USPTO should make the voucher transferable. If the winners are able to transfer the voucher, the economic value of the award will clearly be higher to almost all applicants than if they are required to use the voucher for their own patents. If the program does not allow for transferability, the vouchers are also more likely to be valuable to big entities than to small entities. The USPTO incentive mechanism should stimulate licensing activities by both large and small entities. Some have proposed to limit transferability across sectors or technologies. This may be appropriate, if there is evidence that it would avoid the gaming of the system.

USPTO should also consider allowing the program to be used to initiate third party reexamination. Expanding the program in this manner could increase the value and usefulness of the vouchers, attracting bidders who might want to advance their own cases or to challenge a particular patent.

Finally, we would like to encourage the USPTO to continue designing these mechanisms and implementing it with high levels of transparency and public participation, while avoiding conflicts of interest.

We would like to reaffirm our support for USPTO's efforts to implement a pilot program to incentivize humanitarian technologies and licensing and appreciate the continued opportunity to provide feedback.

Signatures:

Knowledge Ecology International (KEI)

Doctors Without Borders/Médecins Sans Frontières (*MSF*)

Oxfam America

Public Citizen