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Section 14 of the 2011 Patent Reform Act ("Tax Strategies Deemed Within The Prior Art") Would Ensure Equal Access to the Tax Code And Would Not Bar Patenting Of Financial Management, Accounting, Or Tax Preparation Software

The American Institute of Certified Public Accountants (AICPA) believes that patents for tax strategies undermine the integrity, fairness, and administration of the tax system and are contrary to sound public policy. The AICPA accordingly supports enactment of § 14 of the 2011 Patent Reform Act.

The AICPA is the national professional association of approximately 360,000 Certified Public Accountants throughout the country. We have worked closely with Congress and taxing authorities for many years to ensure equity, fairness and simplicity in our tax system. Our members play a major role helping millions of individual taxpayers and businesses, located in every state in the United States, to comply with federal, state and local tax laws.

This provision creates equal access to the tax code for all taxpayers and does not harm tax preparation software. It is an essential component of patent reform legislation.

Software Will Continue To Be Patentable. Software for financial management, accounting and tax preparation will continue to be patentable after enactment of § 14. The legislation provides that "any strategy for reducing, avoiding, or deferring tax liability ... shall be deemed insufficient to differentiate a claimed invention from the prior art." That language means that a patent claim whose only point of "novelty" (i.e., basis of distinction over the prior art) is a tax strategy would not be patentable. However, patent claims directed to software, including financial management, accounting and other software, would continue to be patentable after enactment of § 14 if the claims recite patentable subject matter and do not rely on a tax strategy as the basis to distinguish over the prior art.

New products are often the subject of multiple patents, with multiple claims in each patent. To be patentable, each claim must recite a combination of features that as a whole are not obvious over the prior art. Financial management and accounting software often has multiple, new, and innovative features, even if the software has applicability in preparing tax returns or managing financial information for use in preparing tax returns, and, therefore, is protected under the provision.

The Patent and Trademark Office's system of classifying patents confirms that § 14 will not eliminate patents for all financial and accounting software. For example, tax strategy patents have historically been included in subclass 36 T ("Tax Strategies") in class 705, which covers "Data Processing: Financial, Business Practice, Management, or Cost/Price Determination." There are many other subclasses within class 705 that cover financial planning software that are not tax strategies, including the following:

- 30 - Accounting
- 31 - Tax preparation or submission
- 33 - Checkbook balancing, updating or printing arrangement
- 34 - Bill preparation
- 35 - Finance (e.g., banking, investment or credit)
- 38 - Credit (risk) processing or loan processing (e.g., mortgage)
- 40 - Bill distribution or payment
- 42 - Remote banking (e.g., home banking)

Software Products Will Not Need To Be Altered. Compliance with § 14 will not require manufacturers to remove or exclude lines of computer code directed to tax preparation from their software products. Nor will § 14 restrict the types of software *products* that are sold in the marketplace. It only impacts the types of future *patent claims* that can cover software products. The result is that software companies will continue to have appropriate incentives to develop and sell innovative financial and accounting software. Rather than chilling competition, this will encourage software products to compete in the market on the merits of their ease of use, accuracy and price – rather than granting exclusivity to use particular strategies or techniques for taxpayers to minimize their tax liability. ***As a matter of public policy, all taxpayers should have unhindered access to fully comply with the tax code and to fully utilize interpretations of tax law intended by Congress.***

No Existing Patents Will Be Nullified. The effective date of § 14 is prospective in nature. It will have no impact on the over 130 tax strategy patents which have already been issued by the Patent and Trademark Office, nor will it harm any other type of existing patents or copyright claims.

No Industry Is Being Singled Out. Enactment of § 14 will not single out one industry for discriminatory treatment. The issue corrected by § 14 concerns a matter of important public policy, not the software industry in general or even financial and accounting software in particular. As explained above, the legislation simply prevents patents that would grant exclusivity to the use of tax strategies. The legislation also preserves access to techniques for complying with the tax laws, and minimizing tax liabilities, for all taxpayers. As explained above, it does not require changes to existing or future software products.

Finally, it has been inaccurately argued that § 14 would be the only provision in the patent laws that singles out a particular industry or type of innovation. In fact, the patent code includes several sections that refer to specific industries, including 35 U.S.C. § 287 (c) (limiting remedies with respect to medical and surgical procedures), 35 U.S.C. § 273 (providing a defense specific to business method patents), and 35 U.S.C. § 271 (e) (providing infringement limitations for products made by genetic manipulation techniques).

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