LNB Banking.
It's all about people.

Robert A. Schick
President & CEO
Main Office
35 William Street • Lyons, NY 14489
Phone: 315.946.8260 • Fax: 315.946.6215
BankwithLNB.com

April 10, 2012

Ms. Janet Gongola
Patent Reform Coordinator
United States Patent and Trademark Office
Alexandria, VA 22313

Re: Docket No. PTO–P–2011–0087
Transitional Program for Covered Business Method Patents—Definition

Dear Ms. Gongola:

The Lyons National Bank is a 150 employee bank, serving the residents of the greater Finger Lakes Region in Upstate New York. I am writing today to express strong support the provisions of the Leahy-Smith America Invents Act (AIA) which creates a transitional program at the Patent and Trademark Office (USPTO) to review covered business method patents against the best prior art. This program is an essential step toward improved patent quality and will provide a much-needed mechanism for community banks to challenge patents of dubious quality and curb abusive claims and litigation.

Increasingly, community banks have received patent infringement claims by business method patent holders, usually companies that are non-processing entities whose sole business is to profit from alleged patent infringement. These companies seek to extract settlements from banks on dubious infringement claims. Since community banks do not have the resources for lengthy and expensive litigation, they have no choice but to reach a settlement with these companies. These settlements impact our ability to provide banking and banking-related services to individuals, families and local small businesses.

I urge the USPTO to adopt a final rule that would ensure that the program is available to entities of all sizes, including my community bank with <BANK ASSET SIZE> in total assets. While I am supportive of a fee model that ensures the USPTO has sufficient resources for a sustainable and effective transitional business review program, I am concerned that this fee structure favors larger institutions. I am concerned that because of this fee structure patent holders may unfairly target smaller institutions that might not have the resources to initiate a post grant review under this program.

Therefore, I recommend that the USPTO consider two modifications to the proposed fee structure: first, that the USPTO consider reducing the fee for a business method review in instances where the petition is filed by a small entity with fewer than 500 employees, and second that the USPTO consider breaking the fee into an "application fee" where the balance is not owed unless the USPTO agrees to undertake the review. Such a structure

could help ensure that owners of business method patents do not attempt to extract settlements from small entities, such as community banks, using a settlement value that is based on avoiding the cost of filing a business method review.

Finally, I urge the USPTO the program should construe "financial products or services" in its broadest sense. In the absence of such construction, also supported in the legislative history, those most likely to assert covered patents to harass institutions will simply employ clever tactics to draft claims which mask the true application of the patents at issue – an eventuality specifically contemplated and condemned by the authors of the provision.

I would like to thank the USPTO for the opportunity to comment on the proposed rules, and for your efforts in moving quickly to draft and implement regulations for this important program.

Sincerely,