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2017 Special 301 Public Hearing
Special 301 Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative

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Notice of Intent to Testify and Hearing Statement of the
Intellectual Property Owners Association (IPO)

WITNESS

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HEARING STATEMENT

Special 301 Subcommittee Members:

My name is Vanessa Pierce Rollins, and I am Senior Counsel for International Affairs for the Intellectual Property Owners Association, or IPO. IPO is an international trade association representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights. IPO's membership spans 50 countries and includes about 200 companies and more than 12,000 individuals. IPO advocates for effective and affordable IP ownership rights. On behalf of IPO and its members, I would like to thank you for the opportunity to testify today and for your continued work ensuring U.S. trading partners have effective intellectual property systems.

IPO members make vital contributions to America's economic success by developing the advances that drive exports and create jobs. Innovators assume considerable risk, and we rely on our intellectual property assets to protect our investments in new technology.

In our comments to the Subcommittee, we outline existing and emerging threats to the intellectual property rights of our members. Today I will highlight two areas that, if left unchecked, could cripple our innovation-driven exports and the American jobs they support. The first relates to mounting pressure to dismantle the intellectual property systems that enable

us to invest in new technologies, bring them to the market, and support high paying American jobs. The second concerns growing vulnerabilities due to inadequate trade secret protection in many countries, which have failed to keep pace with the technical innovation that has enabled modern cyber theft.

Pressure to dismantle the IP framework through multilateral fora

IPO members have witnessed intensifying demands to chip away at the IP rights we depend on within multilateral institutions. Such efforts are largely based on misinformation about the impact of IP rights on innovation and technology diffusion. The principal argument is that IP systems are a barrier that needs to be overcome if developing countries are to benefit from innovations and advance. Yet this contention does not accurately reflect the contribution of IP to the innovation and technology diffusion that our members engage in every day. And such debates tend to ignore that IP systems have supported life-changing innovations across all sectors for decades.

Such demands come in many forms. Some are explicit, calling for the elimination of IP rights for certain technologies or the broader use of compulsory licensing. Others take a more insidious approach, advocating for actions like technology buyouts, vague new IP mechanisms, or lists of technologies that would be ripe for transfer. These proposals wreak havoc on the marketplace by introducing additional uncertainty, making it riskier for our members to invest in innovation. This dynamic also discourages us to share technology and knowledge with our partners, despite such exchanges being essential to remaining competitive.

For instance, at the World Intellectual Property Organization (WIPO) several countries have relentlessly pursued a work program focused on expanding exceptions and limitations to patent protections. Designed in three phrases and tabled initially by Brazil, one specific proposal calls for a detailed exchange of experiences with exceptions and limitations, a determination of the most effective ones, and ultimately the development of a WIPO how-to guide that would teach countries to implement and use them as part of their industrial policies. Ironically these and similar programs aimed at eroding IP rights are a regular theme at WIPO, an organization primarily funded by PCT applications, including fees paid by American innovators. For this particular proposal, we appreciate that the U.S. Patent and Trademark Office (USPTO) continues to push back on the work program. Our members remain concerned about such initiatives, as assaults on the IP system are cropping up in increasing numbers and in a range of international bodies. If successful, these programs will impact the ability of our members to obtain and enforce IP rights outside our borders, harming American jobs.

Although such discussions might start out at the international level, these ideologies can influence national legislation. And if they become law, the misguided modifications of IP systems can put American innovators at a severe disadvantage. If we allow our trading partners to continue these unfair tactics, we will ultimately deprive the world of the great advances in technology that American innovators can deliver. We ask for your vigilance to counter these

frequent attacks, including through a robust interagency process that can effectively monitor and push back on IP erosion.

America's increasing vulnerability due to inadequate trade secret protection

The value of American innovation is not lost on our global competitors. Unfortunately some countries enable, and even encourage, their domestic industries to expropriate American know-how. IPO members face threats to their hard-earned trade secrets, through both illicit means and forced regulatory disclosure. Even in countries where misappropriation is not encouraged, many trade secret regimes fail to provide adequate protections against theft through cyber channels, suitable avenues for recovery, or meaningful deterrents. In our increasingly interconnected world, where bad actors can walk away with knowledge that has taken years to develop in their pockets and send it anywhere in an instant, strong trade secret protection around the world can make the difference in preserving American investment and the jobs that come with it. Briefly, allow me to highlight a few examples:

- Austria, despite offering protection for some trade secrets, fails to safeguard non-technical but commercially sensitive information. The law offers minimal criminal penalties for misappropriation, only three months even for the most egregious cases. Our members also face obstacles gathering evidence and having trade secret cases adjudicated by courts specialized in complex technical and commercial issues. We believe the passage of the recent EU Directive on trade secrets provides a unique opportunity for upgrading the existing system.
- In China, our members face high burdens of proof, limited discovery, and minimal damages when seeking to enforce their trade secrets. Especially distressing, a trade secret owner has to wait until a significant and possibly irreversible injury has taken place before seeking relief. Our members also face regulatory requirements to submit confidential details as a condition of market access. Although we are encouraged with recent upgrades, such as the expanded availability of injunctive relief in China's newly amended civil procedure framework, more needs to be done to protect American technology.
- India lacks any explicit protections for trade secrets. Instead our members must rely on contractual obligations to preserve their know-how. But this situation does not match the reality that many of our members face, when there is no relationship between trade secret owner and a potential thief. We welcome the recommendation of India's National IPR policy to study their trade secret protections and are hopeful that the result will be upgraded legislation.
- Finally in Russia there are onerous burdens on our members to enforce their trade secrets, including exacting standards for how the relevant information must be inventoried and marked. Noncompliance with these requirements, which in many cases is impractical, quashes any ability to recover from theft. Our members also find enforcement to be inadequate, with limited examples of injunctions and seizures being applied in practice and weak criminal penalties. Like the other countries highlighted here, Russia's recent endorsement of the APEC resolution, which included APEC Best Practices for Trade

Secret Protection and Enforcement, offers an opportunity for the U.S. to encourage its trading partner to improve their existing safeguards.

In our global, information-based economy, knowledge is often America's most valuable currency. We are encouraged by the positive momentum from the 2016 Defend Trade Secrets Act, which provides federal trade secret protection in the U.S. and could serve as the "gold standard" by which countries could model their own secret laws. Our competitiveness hinges on whether we take advantage of this momentum and foreign trade secret protection upgrades are realized. Yet as illustrated here, trade secret laws around the world fail to offer a level playing field for American innovators. Instead, whether deliberately or not, these inadequate regimes enable competitors to use U.S. innovator's hard-earned knowledge, at a fraction of the cost. We urge you to work with and encourage U.S. trading partners to adopt much needed upgrades to safeguard American know-how.

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In conclusion, innovation-driven jobs depend on high quality intellectual property systems to reinforce them. And with the majority of consumers living outside U.S. borders, effective intellectual property protection in foreign markets is vital for American innovators. Robust IP rights offer a level playing field that enables investment in technology and important offerings to the global marketplace. Our members need your continued engagement to ensure these critical tools remain available, reliable, and enforceable. We look forward to working with you to secure optimal IP regimes globally, and to safeguard the quality, high-paying jobs they can help to deliver.

We again thank the Subcommittee for its efforts to preserve IP rights and promote the innovation that will sustain and grow America's economy.