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2019 Special 301 Public Hearing
Special 301 Subcommittee
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 Mark Lauroesch and I am Executive Director of the Intellectual Property Owners Association, also known as “IPO.”

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 provide adequate and effective protection of intellectual property rights — and fair and equitable market access to companies who rely on IP protection.

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 includes about 200 companies and close to 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members.

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 rely on intellectual property to protect 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 issues that are especially concerning.

First, a number of foreign initiatives and policies are undermining incentives for innovation historically created by IP protection.

Second, technology has made global trade secret theft all the easier, and trade secret protection remains woefully lacking abroad, to the detriment of American innovators.

These issues must be addressed to protect our innovation economy and the American jobs that result from it.

The Undermining of Incentives for Innovation Around the World

Around the world, IP owners face initiatives and policies that undermine the incentive to innovate. These range from technology transfer regulations to compulsory licensing to regulatory controls that mandate the disclosure of confidential technical information. Some of these initiatives, such as regulatory controls, might not appear at first glance to relate to IP. Nonetheless, upon closer analysis, they all undermine the incentives for innovation historically created by IP protection. Examples include:

- Countries with regulatory laws that seek information more broadly than reasonably necessary to accomplish regulatory review or where the regulatory agencies share submitted information with competitors or subsequent regulatory applicants.
- Brazil which has suggested that compulsory licensing is the most powerful tool in its arsenal to improve public health.
- China's discriminatory technology transfer regulations.
- India's National Manufacturing Policy, which discusses the use of compulsory licensing to help domestic companies "access the latest patented green technology" and its National Competition Policy that requires IP owners to grant access to "essential facilities" on "agreed and nondiscriminatory terms" without reservation.
- Russia, where compulsory licensing is also becoming an issue.

Such initiatives and policies contribute to the lessening of the value of IP. They discourage, rather than encourage, innovation. They are detrimental to the many companies that drive our innovation-based economy. Encouraging trading partners to eliminate these types of initiatives and policies should be an important priority.

Increasing Vulnerability Due to Inadequate Trade Secret Protection Abroad

Technology continues to develop at a rapid pace. Unfortunately, that technology makes it easier to obtain trade secrets illicitly. Companies face threats to their hard-earned trade secrets,

through both illicit means and forced regulatory disclosure, as discussed above. Many countries fail to provide adequate enforcement mechanisms and punishments to prevent, deter, and remedy trade secret theft. Examples include:

- In China, our members face high burdens of proof, limited discovery, and damages issues when seeking to enforce their trade secrets. Especially distressing, a trade secret owner must wait until a significant and possibly irreversible injury has taken place before seeking relief. Our members also face requirements to submit confidential information to government agencies, which could result in the disclosure of trade secrets.
- Russia offers nominal, weak, and unpredictable protection for trade secrets, leaving little protection for innovators doing business in the country. Enforcement tends to be inadequate as well. Criminal penalties are similarly lacking.
- India lacks civil and criminal statutory protection for trade secrets. Contractual obligations provide the primary vehicle for protecting trade secrets. Although other means of protection might exist, such as suing under the tort of “breach of confidence,” each has a common shortcoming: requiring a close relationship between the trade secret owner and the would-be misappropriator.

In our innovation economy, knowledge is often the most valuable currency. Yet, trade secret laws around the world continue to fail to offer a level playing field for innovators. This enables competitors to use an innovator’s hard-earned knowledge without the cost of developing it. We urge you to work with and encourage trading partners to adopt much needed trade secrets upgrades to safeguard American know-how.

In conclusion, innovation-driven jobs depend on high quality intellectual property systems. Effective intellectual property protection in foreign markets is vital for American innovators. It enables investments in research and development, and technology that results in important offerings in the global marketplace. Our members need your continued engagement to ensure the ability to protect their intellectual property. We look forward to working with you to build a global IP environment that encourages innovation and safeguards quality, high-paying jobs in innovative industries.

We again thank the Subcommittee for its efforts to promote the protection of IP rights globally, which will sustain and grow America’s economy.