



February 6, 2020

2020 Special 301 Public Hearing  
Special 301 Subcommittee  
Office of the United States Trade Representative

Docket No. USTR–2019–0023

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:

I am pleased to be with you today. My name is Thomas Valente, and I am Senior Director for Global Affairs at 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 175 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 risks and rely on intellectual property to protect investments in new technology.

In our comments to the Subcommittee, IPO notes numerous deficiencies in, and challenges presented by, IP laws around the world. It also notes some improvements that have been made on issues previously raised. We thank you for your work that has made these improvements possible. IPO remains optimistic that further progress can be made in 2020 and beyond.

My testimony today will address two impediments to appropriate protection of intellectual property rights abroad: 1) inadequate protection of trade secrets and 2) compulsory licensing.

### **Inadequate Protection of Trade Secrets**

Protecting trade secrets around the world continues to remain a top priority for IPO members. When trade secret laws are deficient or non-existent, this enables competitors to use an innovator's hard-earned knowledge without the cost of, or the risks associated with, developing it.

Many countries fail to provide adequate enforcement mechanisms and punishments to prevent, deter, and remedy trade secret theft. Some examples include:

- India lacks civil and criminal statutory protection for trade secrets. Contractual obligations provide the primary vehicle for protecting trade secrets, but they require a close relationship between the trade secret owner and the would-be misappropriator. Bad actors who choose to steal information rather than innovate are often not in privity with trade secret owners.
- Russia offers nominal, weak, and unpredictable protection for trade secrets, leaving little protection for U.S. innovators doing business in the country.
- In China, our members face high burdens of proof, limited discovery, and damages issues when seeking to enforce their trade secrets.

Although we have been pleased to see recent upgrades in China, such as the expanded availability of injunctive relief in China's amended civil procedure framework, more needs to be done. We are encouraged by Section B (Articles 1.3-1.9) of the Phase I Economic and Trade Agreement between the U.S. and China, which if fully implemented, will substantially improve trade secret protection in China.

We urge you to continue your work to encourage trading partners to adopt and implement much needed trade secrets upgrades to safeguard American know-how.

### **Compulsory Licensing**

Compulsory licensing undermines the economic incentives created by the IP system for investment in the research and development that leads to innovation. Yet, efforts to impose compulsory licensing appear to be increasing, including that:

- Countries that have issued compulsory licenses in recent years have included Indonesia, Malaysia, and Russia.

- In December 2019, Argentina passed an emergency law that increases the likelihood of compulsory licenses being issued.

Further, national policies in countries such as India and South Africa are supportive of compulsory licensing.

More innovation is needed to meet the challenges of our age, and the costs associated with the research and development needed for science to progress are often quite high. Compulsory licensing devalues the IP that is necessary to encourage investment in this research and development.

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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.