

Intellectual Property Owners Association Oral Testimony
United States International Trade Commission Investigation No. 332-596
COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement
Flexibilities
Public Hearing: March 29-30, 2023

My name is Daniel Enebo and I am here representing the Intellectual Property Owners Association, known as IPO, of which I serve as Treasurer. Thank you for allowing me to testify before you today on the important topic of “COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement Flexibilities.”

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services to its members. IPO’s vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO’s mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

My statement today focuses on the important role of the TRIPS Agreement in facilitating and promoting the legal framework for the protection of intellectual property: a framework that fosters innovation, collaboration and partnerships among inventors, investors, manufacturers, and suppliers in order to improve the lives of end users. It is our sincere concern that an expansion of the existing COVID-19 TRIPS Decision runs the risk of weakening of the global IP framework embodied in TRIPS in a way that will disrupt the IP ecosystem and impede the creation and production of the very innovations that tackle global problems.

IPO welcomed the U.S. Trade Representative’s request that the United States International Trade Commission launch an investigation covering the real world implications and effects of such a broadening of the current COVID-19 waiver. We thank you for instituting the investigation. We believe that the facts will not support the claim that the existing IP framework is an obstacle to distribution of the measures needed to combat COVID-19 but, instead, will show that the TRIPS innovation framework has facilitated many years of innovation investment and technical work that led to foundational innovations that have been

pointed towards fighting COVID-19. It is a framework that is already working to provide future innovations to solve future global challenges.

The current IP framework leads to innovation, collaboration, and partnerships.

The current IP framework embodied in TRIPS provides for the protection of innovation and assists in the sharing of intellectual property which enables more rapid and effective innovation, collaboration, and partnership.

The unprecedented development of innovative technology platforms and solutions that allowed us to quickly pivot to tackle this pandemic provides an emphatic demonstration of an effective IP framework. The incentives provided by the IP system have enabled innovators to build the infrastructure that has allowed them to devote the resources, technical knowledge, and know-how necessary to develop the solutions that were ultimately required to counter COVID-19. IP has enabled an unprecedented amount of innovation and facilitated collaboration between innovators and their partners. Companies have worked together to produce vaccines and needed respirators, for example. They have cooperated to provide technology to facilitate contact tracing, produce high quality personal protective equipment, improve testing, and create treatments for COVID-19. It is maintaining the IP system that will fuel the next generation of solutions for even yet unknown global challenges. IP has also been instrumental in building a foundation that was essential in helping society adapt to the impact of the pandemic, through incentivizing technology advancements and facilitating connection and collaboration.

The huge breadth of the existing technology foundation that allowed for the full attention to, and speed in, developing these solutions can be traced directly to the guarantees offered by IP protection, as reflected in the TRIPS Agreement. Effective vaccines, for example, were successfully developed in response to the pandemic in such a short period of time precisely because the key players understood that for many years, and across the globe, the immense resource commitments, the enormous financial risks, and the partnerships that they entered into, would be protected by an effective IP system.

This IP system is an important ingredient in a global economic system that supports the efforts of innovators to identify, and engage with, partners in order to further strengthen manufacturing capacity and commit to safe products all around the world. IPO believes that this sourcing system, facilitated by the IP system, results in better, faster, and safer solutions for end users.

This system provides for additional transparency that allows consumers to make more informed decisions about the products that they may choose to purchase, use, and/or ingest and for investors to make more informed decisions about the products that they may choose to support with their resources.

In sum, IP helps facilitate, not impede, technology transfer. It provides a framework in which people can exchange and share information and grow the global network of technology in a practical sense. It allows innovators to partner to create new technologies and to share technical information with suppliers and manufacturers with the knowledge it will be protected and used effectively. That is a success story of this pandemic: Innovators, suppliers, investors, and manufacturers have partnered effectively with each other because their inventions were protected by IP.

The TRIPS Agreement plays a central role.

The TRIPS Agreement imposes binding obligations on all 164 Members of the WTO, with some exceptions for least developed countries, and covers approximately 98% of global trade. TRIPS was negotiated “*to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights...*”¹ These objectives are shared across all segments of the modern economy and are made effective through specific disciplines on copyright, trademarks, and patents, among other forms of intellectual property that have been protected since the 19th century.

The benefits of protecting IP rights have led to countless innovations that have improved human existence. Consequently, policy measures designed to modify the current framework must be evaluated with exceptional care. This is particularly the case where the TRIPS Agreement provides for limited exceptions to the rights conferred.

Absent clear evidence that the current IP system embodied in the TRIPS protocol in fact was a primary limitation on the global response to COVID-19, the focus should be on securing a stable and predictable TRIPS regime - a regime that set the innovation table for the rapid response to COVID’s unique challenges. As I’ve mentioned, innovation spurred by intellectual property is not a barrier to addressing our global challenges. Rather, intellectual property is essential to the solutions to these challenges.

¹ WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, Preamble.

The TRIPS Agreement is important for every segment of the global economy. It provides incentives for innovation and international collaboration to address all forms of global challenges from public health to the environment to food and agriculture. These challenges can only be met with investment in research and technology, and through creative thinking about solutions. The expectation that the creative output resulting from costly R&D initiatives will be protected is vital and must be preserved.

Further Modification of TRIPS will set a dangerous precedent.

Continuing discussions to waive or weaken IP protections, without clear and compelling evidence, will set a dangerous precedent for the innovative community. In fact, we are already seeing this play out, as we are now beginning to hear of other likely TRIPS waiver requests in other areas of international interest.

We are also seeing forced technology transfer being raised as an option. Forced technology transfer is disfavored by U.S. trade policy, and for good reason. As noted in the U.S. Trade Representative's 2022 Special 301 Report, such transfers disadvantage U.S. companies, discourage foreign investment in national economies, and slow the pace of innovation and economic progress. Yet, despite these negative impacts, forced technology transfer related to COVID-19 has been the subject of proposed legislation abroad, demonstrating that forced technology transfer remains a real threat to innovative industries.

We believe there has never been a time facing us that presented a greater need for innovation, ingenuity, investment, and collaboration across many fields of study. We are concerned that the pursuit of perceived short-term gain from expanding the TRIPS Decision to COVID therapeutics and diagnostics will undercut our efforts to solve the next great challenges. Such stepping back from support for innovators and collaborators will have negative effects on investment across all industries with a perception that innovations could be denied IP protection under the TRIPS Agreement even absent evidence to support such determinations. Creating circumstances where innovators cannot attract investments for research and development, where they avoid effective partnership arrangements, where they eliminate voluntary licensing initiatives, or where they withdraw from other basic knowledge-sharing arrangements would be costly for the citizens of the world. The unpredictability resulting from further modifying TRIPS can be expected to adversely impact the innovation system globally, at a time when we need to encourage innovation to address our global challenges.

Conclusion.

IPO strongly supports equitable, widespread, and successful distribution of vaccines, therapeutics, diagnostics, and other measures necessary to meet the challenges of COVID-19. But, it must be reiterated and emphasized that it was thanks to IP protection that the world was able to benefit from decades of technology development and collaboration that served as the foundation for COVID-specific solutions that were rapidly developed and manufactured. We will no doubt be similarly grateful for IP protections that yield future innovations and allow innovators to work with other innovators, suppliers, and manufacturers to address our global challenges.