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2024 Special 301 Public Hearing
Special 301 Subcommittee
Office of the United States Trade Representative
Docket No. USTR-2023-0014

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 (IP) rights — and fair and equitable market access to companies who rely on IP protection.

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, IP rights. IPO membership includes over 125 companies and spans over 30 countries. 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 2024 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.

Trade Secret Protection

For years, Article 39 of TRIPS has required WTO members to ensure effective protection of trade secrets. In the years since TRIPS Article 39 was agreed (December 15, 1993),¹ there have been insufficient efforts in many WTO member countries to bring the laws, regulations and enforcement environment up to compliance with the required standard. Further, our members are concerned with the significant risk of trade secret disclosure that could result from administrative investigations or data legislation, if sufficient protection for trade secrets is not in place. IPO

¹ The Uruguay Round of negotiations created the World Trade Organization and negotiated the General Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), all of which became effective January 1, 1995. *See, e.g.*, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm.

suggests that improving the global environment for protection of trade secrets be one of the top priorities for the Special 301 Report and for further action.

Further U.S. action should include, for example, setting high levels of trade secret protection as a requirement under bilateral or multilateral trade agreements, both in the negotiation and enforcement stages. Elements of effective protection of trade secrets and undisclosed information include at least minimum standards to fully implement obligations under TRIPS Article 39, adequate and effective remedies (such as injunctions and criminal penalties) to stop misappropriation of trade secrets, and prohibition of compulsory licenses of trade secrets.

Compulsory Licensing

The patent system drives and enables research and development that is delivering valuable new innovations to society, and it has facilitated an unprecedented amount of collaboration that is advancing solutions to the most pressing issues facing society today. However, several countries, such as Argentina, Brazil, Chile, Colombia, Egypt, Russia, Thailand, and Turkey, have adopted or are considering resolutions, laws, or regulations that promote or provide broad discretion to issue a compulsory license. The European Commission has proposed draft legislation for the grant of EU-wide compulsory licenses. Compulsory licenses have been issued in previous years in several countries, including Hungary, India, Indonesia, Israel, Malaysia, and Russia.

IPO strongly opposes compulsory licensing of intellectual property rights with respect to all industries and technologies. Although IPO recognizes that compulsory licenses of IP rights may be legally permissible in limited and rare situations, IPO believes that licensing of IP rights is best

accomplished through voluntary efforts.² This is because granting compulsory licenses undercuts the importance of a predictable and reliable patent system and undermines investment in innovative solutions that benefit society. Our members are also concerned with proposals to include forced technology transfer along with compulsory licenses.

Conclusion

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.

² See, e.g., IPO Board Resolution dated December 3, 2020: Resolution on Compulsory Licensing, <https://ipo.org/index.php/resolution-on-compulsory-licensing/>.