2015 Special 301 Public Hearing
Special 301 Subcommittee of the Trade Policy
Staff Committee Office of the United States
Trade Representative

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**Hearing Statement of Intellectual Property Owners Association (IPO)**

Special 301 Subcommittee Members:

My name is Herb Wamsley. I am Executive Director of Intellectual Property Owners Association, or IPO. IPO is a diverse trade association representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights, ranging from pharmaceuticals and biotechnology to electronics and information technology.

The members of our association make vital contributions to America's economic success by developing advances that drive exports and create jobs. We rely on our IP assets worldwide to protect our investments in new technology. Our 22-page written submission outlines a number of existing and emerging threats to IP rights. Today I will highlight a few trends that if left unchecked will erode U.S. competitiveness, and I will highlight a few signs of possible improvements.

***Pursuits of Weaker IP Systems that Undermine U.S. Competitiveness***

First, we are witnessing efforts to weaken IP rights originating from a growing number of sources, both within international bodies and from some of our trading partners. While these policies are purportedly designed to increase access to technology, in reality they create significant uncertainty for investors. Robust IP rights provide support to bear the risks associated with innovation, enabling the commercial partnerships and global value chains necessary to spread technology results around the world.

At WIPO, an organization whose very mission is to enable innovation, pressure continues to intensify to create work programs focused on exceptions and limitations to patents. Demands to erode or even extinguish IP rights are commonplace at the World Health Organization, the UN Framework Convention on Climate Change, the World Trade Organization, and the Post-2015 Development Agenda. Proposals range from explicit exclusions from patentability and widespread compulsory licensing to more subtle but no less dangerous appeals for the removal of so-called "IPR barriers" and concessional licensing.

A push for so-called "rebalancing" of IP systems is unfolding at the national level. Some countries are actively encouraging more compulsory licensing, a tool that should be used sparingly. Other efforts to erode rights include unconditional requirements to license IP relating to essential facilities, interference with technology transfer agreements, and obligations to license patents that relate to standards without participating in the process.

Some pathways to protect incremental innovation are being blocked. Heightened utility standards for patents, requirements to demonstrate enhanced efficacy, dual patent examination and a ban of patents on second uses are examples. Proponents of such policies underestimate

the commitment it takes to translate technical breakthroughs into commercially viable offerings.

### *Growing Global Focus on Improving Trade Secret Protection*

Second, IPO members are increasingly finding themselves targets of sophisticated efforts to steal their trade secrets.

We are encouraged by recent developments with the potential to improve this underdeveloped area of law. China plans to conduct a legislative study of a revised law on trade secrets and India identified a need to fill gaps in its protective regime. Here in the U.S. and in the European Union, legislative efforts are underway to modernize existing protection. Trade secret protection is also being seriously discussed as part of trade agreements.

In the meantime, IPO members continue to struggle with fragmented and frequently ineffective trade secret protection. Once a breach is discovered, there may be little or no recourse. This leaves our members with a difficult choice – keep confidential details close to the vest, slowing down open innovation, or collaborate and risk destroying the competitive edge.

We also have to contend with government sanctioned efforts to strip away trade secrets. Disclosure of confidential information is often a condition for market access. Localization and cross-border collaboration often make good sense, but these decisions should be freely made on the basis of mutual agreement and trust between private parties. Collaboration should be encouraged.

### *Backlogs and Other Impediments to Securing IP Protection*

My third and final point is that in many jurisdictions IPO members face patent and trademark application backlogs and other impediments to securing IP protection. Delays caused by backlogs complicate

investment decisions and make it harder to enter the local markets. This adds uncertainty in the market and increases development costs. The U.S. Patent and Trademark Office is to be commended for making inroads into its backlogs and for working to improve quality. Our trading partners should reduce their backlogs while maintaining quality, for example through improving digital infrastructure, engaging in work sharing and streamlining examination.

IPO members encounter other impediments to securing IP protection. Examples include complex and costly proposed inventor remuneration schemes, antiquated requirements for providing notification of counterpart and related patent applications, mandatory hiring of local patent agents, and procedures that make it difficult to challenge bad-faith trademark registrants.

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Our economic future relies on robust IP systems that sustain innovation. IP protection enables innovators to turn ideas into products and services that generate exports and create jobs. We appreciate the opportunity to testify, and we thank the Subcommittee for its efforts to preserve the IP tools that allow us to capitalize on ingenuity which sustains and grows America's economy.