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2016 Special 301 Public Hearing
Special 301 Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative

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 the Executive Director of the Intellectual Property Owners Association, or IPO. IPO is a global trade association representing companies and individuals in all industries and fields of technology who own or are interested in intellectual property rights. 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 have effective intellectual property systems.

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 we rely on our intellectual property assets at home and abroad to protect our investments in new technology. Our comments submission outlines a host of existing and emerging threats to the intellectual property rights of our members. Today I will highlight a few alarming trends that, if left unchecked, could erode U.S. competitiveness, constrain export growth, and lead to loss of high-paying U.S. jobs.

Capitalizing on the Momentum to Upgrade Trade Secret Regimes

The creation of knowledge drives our economy, and American competitiveness is inextricably linked to intellectual property protection. Yet globally, trade secret protection is often inadequate or lacking entirely. And while momentum is building to upgrade our defenses, the legal protections and enforcement around the world have not kept pace with technology that allows access and misappropriation of our innovators' most valuable information. Significant gaps in protection exist in many countries, such as Austria's failure to protect against disclosure of non-technical, confidential information, India's requirement that a contractual relationship between the trade secret owner and the would-be misappropriator exist in order to take action for a misappropriation, China's requirements to submit technical information as a condition of market access with little assurance to protect it from disclosure, and China's overwhelming, burdensome requirements to bring trade secret misappropriation actions.

As the pace of innovation intensifies, whether we can safeguard our knowledge-based investments will be a determining factor in the fate of the U.S. economy. We cannot create or collaborate at the breakneck pace the market demands without meaningful improvements to trade secret protection. We are poised at a point when tremendous potential exists to improve the environment. We will hopefully soon see U.S. legislation that could create a "gold standard" by which countries could model their own secret laws, the European Commission reaching a preliminary agreement on a European Trade Secrets Directive, and the possibility of establishing better norms through the Trans-Pacific Partnership. But our competitiveness hinges on whether we take advantage of this momentum and foreign trade secret protection upgrades are realized.

Unfounded Assertions That Intellectual Property Rights Are a Barrier to Technology Transfer

IPO members continue to witness concerted efforts to weaken intellectual property rights in the name of development, access to health, and environmental concerns. Intellectual property rights have been unfairly portrayed as a barrier to technology transfer based on arguments that they limit availability of technologies and make them more expensive to secure. It is the threat of intellectual property erosion, however, that increases the cost of technology and slows its adaptation and deployment across countries. Sadly, attempts to place limitations and conditions on intellectual property by developing countries are adversely impacting the transfer of needed technology and slowing those countries' innovation growth. Innovators in the US as well as in other countries require investments over many decades before a solution emerges and can be deployed at a significant scale. Intellectual property rights must be reinforced rather than eroded to encourage this investment.

More specifically, initiatives aimed at impairing incentives to innovate continue to grow in a number of international fora and at the national level. To provide one example, an instruction manual for introducing exceptions and limitations to intellectual property rights are regularly on the agenda at the World Intellectual Property Organization (WIPO). Similarly, certain expressed

preferences for forced technology transfer over commercial arrangements make it more difficult for intellectual property owners to engage locally at the expense of erasing years of R&D expenditures. The real cost of these policies is fewer investments in innovation and the chilling of technology diffusion.

U.S. Competitiveness Is Increasingly Harmed by Backlogs and Other Bars to Securing Intellectual Property

Competitive pressure drives our members to innovate faster than ever before, and in many cases product life cycle times are becoming extremely short. In some countries, debilitating application backlogs at patent and trademark offices exist at odds with the pace of innovation. The inability to timely secure intellectual property rights discourages entry into foreign markets and encourages free riders of others' innovations. In addition to difficulties in clarifying our own rights, extended pendency makes it harder to identify the intellectual property rights of others. This can lead to costly and inefficient redesign of product offerings after they have been introduced or to reduced margins from payment of license fees for a patent that could have been designed around.

The difficulty in securing intellectual property rights on a timely basis is attributable to more than simply the rising numbers of applications. Multiple agency reviews of applications, shifting patentability criteria, and requirements to inform patent offices concerning related prosecution already known to examiners, exhaust valuable resources. We are confident that streamlining of patent and trademark office processes and embracing work sharing programs could help relieve this strain for U.S. innovators. Our members are encouraged by the U.S. Patent and Trademark Office's work in these regard, including the recent Patent Prosecution Highway agreement with Brazil's Intellectual Property Office, and look forward to working with you to help tackle these impediments to protecting U.S. innovation.

In conclusion, our economic future relies on robust and well-functioning intellectual property systems. These systems need to supply incentives that enable U.S. and other innovators to invest, collaborate, and tackle difficult problems. These efforts will improve lives all over the world while supporting growth, exports, and the creation of high paying jobs at home.

We again thank the Subcommittee for its efforts to preserve the tools that protect and encourage the innovation that continues to sustain and grow America's economy.