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July 31, 2012

The Honorable Robert Goodlatte
Chairman
Subcommittee on Intellectual Property,
Competition, and the Internet
B-352 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Mel Watt
Ranking Member
Subcommittee on Intellectual Property,
Competition, and the Internet
B-352 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Watt:

Intellectual Property Owners Association (IPO) writes to express its strong opposition to H.R. 3889, the “Promoting Automotive Repair, Trade, and Sales Act,” or “PARTS Act,” introduced on February 2, 2012.

IPO is a 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 more than 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members.

IPO opposes H.R. 3889 for two primary reasons. First, it would virtually eliminate design patent protection for the automobile industry (cars, trucks, and other motor vehicles), weakening incentives for innovation and eliminating U.S. manufacturing jobs. Second, the bill would set a harmful precedent for all U.S. intellectual property rights.

H.R. 3889 would allow anyone to make, test, offer to sell, advertise, or import any article of manufacture that was similar in appearance to the component part of an original equipment manufacturer (OEM) even if such activity would infringe a design patent, as long as the purpose was to restore a vehicle to its original appearance. With regard to use or sale of motor vehicle component parts, the bill would reduce design patent owners’ period of exclusivity from 14 years to 30 months or less. This means that design patent owners who invested time and resources in design would be unlikely to recoup their investment costs before others could use or sell their motor vehicle component parts to restore a vehicle to its original appearance.

It is beyond dispute that fresh, creative styling serves as a huge inducement to consumers to buy automobiles and other motor vehicles. The development of a successful motor vehicle design is difficult and expensive. It is a multi-step process that includes creating, testing, marketing, and selling an original design. The patent system was designed to reward such creativity and risk taking. Copying existing designs, on the

other hand, is neither difficult nor expensive. Copying in industries is occurring today. Virtual 3-D scanning and replicating equipment, for example, has made it very simple to clone OEM parts. A 2011 U.S. Department of Commerce report stated that “[c]ounterfeiting continues to be a major issue for the automotive parts industry, particularly for the aftermarket sector.”¹ The report cited a Frost & Sullivan estimate that “auto suppliers will lose an estimated \$45 billion worldwide in 2011 to counterfeiting.”² H.R. 3889 would benefit the copiers: a group that does not invest in creating new designs, but merely copies the work of design patent owners at low cost.

Investment in innovation creates U.S. jobs. According to a 2012 U.S. Department of Commerce Report, “[i]n total, 40.0 million jobs, or 27.7 percent of all jobs, were directly or indirectly attributable to the most IP-intensive industries.”³ The study also found that “IP-intensive industries accounted for about \$5.06 trillion in value added, or 34.8 percent of U.S. gross domestic product (GDP), in 2010.”⁴ The 2011 U.S. Department of Commerce study, specific to the automotive industry, stressed that “[t]he U.S. auto industry is a key component of the nation’s manufacturing base. In a typical year, it accounts for five percent of GDP...and about 674,000 U.S. employees in 2010....”⁵ H.R. 3889 would retard growth and decrease U.S. jobs in the industry by exempting copies from design patent liability.

Moreover, H.R. 3889 would set a bad precedent for all intellectual property rights by exempting a particular industry or class of patentable designs from protection. IPO believes the law should attempt to treat intellectual property rights in all industries the same. Many industries produce products that are subject to repair and replacement, including: razors and razor blades, pens and pen refills, drills and drill bits, printers and ink cartridges, cell phones and batteries, computers, cables and peripheral devices, and medical equipment and supplies. H.R. 3889 would encourage copiers in every industry to seek their own exceptions, slowly eroding U.S. patent laws. If a patent is unenforceable, the inventor is left with less incentive to innovate and no incentive to file future patents. Patents disclose inventions to the public at an early date and encourage others to create improvements and alternatives. Design patents, like other patents, are granted only for works that are new and not obvious, and less likely to be created in the absence of patent incentives.

¹ U.S. Department of Commerce, On the Road: U.S. Automotive Parts Industry Annual Assessment (2011), available at <http://trade.gov/static/2011Parts.pdf>.

² *Id.*

³ U.S. Department of Commerce, Intellectual Property in the U.S. Economy: Industries in Focus (2012), available at <http://www.esa.doc.gov/sites/default/files/reports/documents/ipandtheuseconomyindustriesinfocus.pdf>.

⁴ *Id.*

⁵ U.S. Department of Commerce, On the Road: U.S. Automotive Parts Industry Annual Assessment (2011), available at <http://trade.gov/static/2011Parts.pdf>.

INTELLECTUAL PROPERTY OWNERS ASSOCIATION

The studies cited above demonstrate that innovation and patents are critically important to the U.S. economy. This bill would upset long-standing intellectual property rights, telling the world it is all right to copy American products. Such a signal will harm U.S. economic growth and the future of U.S. innovation.

Thank you for considering our comments. We request that they be made a part of the record for the August 1, 2012 hearing on H.R. 3889. IPO stands ready to assist the Committee in any way it can.

Sincerely,

A handwritten signature in black ink, appearing to read "R. F. Phillips". The signature is stylized and somewhat cursive.

Richard F. Phillips
President

cc: House Judiciary Committee Members