July 9, 2010

Secretary to the Commission
Marilyn R. Abbott
United States International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Re: IPO Submission for Investigation No. 332-514, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy*

Dear Secretary Abbott:

Intellectual Property Owners Association ("IPO") respectfully submits this written statement concerning Investigation No. 332-514 and particularly regarding China's indigenous innovation product accreditation policy. Other aspects of this Investigation, that is, those subjects of the Investigation concerning the principal types of IPR infringement in China, or the quantitative effects of IPR infringement in China and indigenous innovation policies in China on the U.S. economy, are not addressed within this submission.

IPO is an international association, based in the United States, of more than 200 companies and a total of 11,000 individuals involved in the association either through their companies or as an IPO inventor, author, executive, law firm, or attorney member. Founded in 1972, IPO represents the interests of all owners of intellectual property covering all areas of technology. IPO members also file approximately 30 percent of the patents filed in the United States Patent and Trademark Office by U.S. nationals and a significant percentage of applications at the State Intellectual Property Office (SIPO).

National Indigenous Innovation Product Accreditation Policy

In November 2009, the People's Republic of China issued a Notice Regarding the Launch of the National Indigenous Innovation Product Accreditation Work for 2009. This Notice detailed six product areas in which products can be submitted for indigenous innovation product accreditation. After receiving public comments, three Chinese government agencies, the Ministry of Science and Technology (MOST), the National Development and Reform Commission, and the Ministry of Finance jointly issued a new Notice Regarding the Launch of the National Indigenous Innovation Product Accreditation Work for 2010 (the "Notice") on April 10, 2010. This Notice

relaxed certain accreditation requirements in response to public comments. The public comment period for this Notice closed May 10, 2010.

The Notice designates six technology areas eligible for accreditation: computer and application devices, telecommunication products, office appliances, software, alternative energy and equipment, and high-efficiency energy-saving products. Presumably, public institutions in China will be required to purchase from a catalog of accredited products within these sectors. Manufacturers in China that qualify can apply for accreditation for their products if their products meet six criteria:

1. Products are in accordance with Chinese laws and regulations, as well as national industry policies and technology policies;

2. The applicant enjoys intellectual property rights (IPR) or licensed rights to use IPR in China for its products through technical innovation or transfer, with no IPR disputes;

3. The applicant legally enjoys the exclusive rights to use the trademark of the product or usage rights of the trademark of the product in China;

4. The products should be technologically advanced, with outstanding performance in saving energy, improving energy efficiency and reducing pollution, or with substantive improvements in structure, material or techniques that have profoundly raised the performance of existing models;

5. The products should be reliable in quality. For products subject to national special industry management regulations, the manufacture should possess manufacturing license issued by relevant State Council departments. For products that are subject to national mandatory certification, the manufacturer should possess relevant mandatory certification certificates;

6. The product should have entered market sales channel or enjoy potential for economic profit and relatively affirmative market prospects.

General Concerns Regarding Implementation of China's Indigenous Innovation Policy

Development of the "indigenous innovation" policy in China has been closely associated with the 15 year Science and Technology Plan launched by China in 2006. IPO supports and applauds China's efforts to become an innovative economy through more robust and predictable IP protection and enforcement, and through greater commercialization of government funded R&D. However, this policy has the potential to detrimentally limit the rights of IP holders based on the nationality of the IP holder or the situs of the activity that gives rise to the IP rights.

While recognizing every nation's right to promote domestic research and development, the policy, as currently proposed, promotes such domestic research and development by favoring government procurement of products embodying patent rights that either originate in China or are licensed through transfer to a Chinese entity. Consequently, for purposes of government procurement, products embodying patent rights associated with innovation originating outside of China and that are not owned by or have been licensed through transfer to a Chinese entity will no longer be treated the same as products embodying patent rights that originate in China or are licensed through transfer to a Chinese entity by the Chinese government. We wonder whether such policy effectively discriminates between patent rights associated with innovation originating inside versus outside of China. Can the Chinese entity be a subsidiary of a foreign company? The GATT TRIPS provisions (*see* Article 3 of the TRIPS Agreement) mandate non-discriminatory treatment of patent rights. China's policy could lessen the value to, and thereby discriminate against, U.S. owners having Chinese patent rights originating outside of China.

Moreover, many of IPO's members have manufacturing and R&D facilities throughout the world, including in China. Collaborative R&D efforts are vital to multinational research organizations. Activities flourish in those environments where communications, investment opportunities, staffing and facilities management make the most economic sense for that particular organization. To effectively require that the R&D activities of our members take into account any particular nation's indigenous innovation policy imposes a government mandate rather than a well balanced business based solution as to the situs for innovation. Our members' efforts to improve their existing products and develop new products is disrupted and adversely impacted by this indigenous innovation policy.

The policy, as presently proposed, also will hinder transparency in Chinese government procurement and creates an uneven playing field in planning development efforts by U.S. companies.

Access to the Chinese market is of concern to many IPO members. It is a step backwards to use IP rights as part of the indigenous innovation policy. Such use of IP rights within this policy is viewed as part of a domestic protectionist agenda at the expense of U.S. industry and does not promote a cooperative working relationship between countries.

Specific Concerns Regarding Criteria of the Accreditation Indigenous Innovation Policy

Turning now to the aforementioned criteria, certain terms of the policy are considered vague and ambiguous. Clarification of these terms will make this policy far more predictable and thus promote a business environment in which promotion and protection of innovation can be more easily addressed. More particularly:

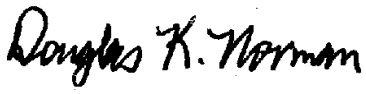
1. Criterion 1 requires that the products be in accordance with the Chinese national and technology policies. It is unclear as to which national and technology policies are referred to under criterion 1. These national and technology policies should be specifically identified with particularity paid to the specific sections of such policies applicable to the indigenous innovation policy.

2. Under criterion 2, accreditation can be had for products having no "IPR disputes." There is no explanation as to what is meant by an IPR dispute. Is an unsubstantiated allegation raised by a third party a dispute? What if there are many patentable features within the product and only one is disputed? Who decides and what criteria are used to decide if there is a legitimate dispute?

3. Clarification is required in order to properly interpret what is meant by a product being "advanced" (criterion 4) and having "potential for economic profit and relatively affirmative market prospects" (criterion 6)

We thank the ITC for this opportunity to provide comments for consideration and would be pleased to meet with or otherwise engage in further discussion with the ITC regarding this submission.

Sincerely,



Douglas K. Norman
President