



June 19, 2012

The Honorable Hillary Clinton  
Secretary of State  
U.S. Department of State  
2201 C St. NW  
Washington, DC 20520

The Honorable Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

The Honorable Ronald Kirk  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th St. N.W.  
Washington, D.C. 20508

Dear Secretaries Clinton and Chu, and Ambassador Kirk:

Intellectual Property Owners Association (IPO) would like to thank you for your steadfast commitment to maintaining strong intellectual property rights (IPR) protection for American businesses which are among the leading innovators, manufacturers, and energy producers in the world. As a follow-up to a March 21, 2012 letter sent to you from several groups, including IPO, regarding IPR concerns during negotiations at the "Rio+20 United Nations Conference on Sustainable Development", we would like to follow up by presenting our position regarding trade secret protection and technology transfer issues that are certain to arise at the Rio+20 Conference.<sup>1</sup>

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 over 12,000 individuals who are involved in the association either through their companies or as inventor, author, executive, law firm, or attorney members.

As representatives of industry, we have serious concerns regarding any involuntary technology transfer obligations introduced through the Rio+20 Conference that would involve divulging proprietary technology or know-how, including technology or know-how that rises to the level of trade secret status.

<sup>1</sup> "Trade secret" (as defined under the Uniform Trade Secret Act which is the basis for most State Trade Secret Act Statutes) means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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The Rio+20 Conference has become the latest forum with the potential of undermining IPR in the name of sustainable development and climate change. In the negotiations towards a Declaration, some countries are suggesting proposals that would conflict with the current system of IPR protection. For example, there are proposals to provide assured access to technologies and information, and to give an unnamed UN body carte blanche authority to disseminate clean technology to developing nations.

IPO is concerned because the Rio+20 Declaration has the potential to become a reference point for future work on climate and sustainable development initiatives. Due to the potential for outcomes at Rio+20 to influence future work, even soft or implicit language that supports weakening or ignoring IPR in the Rio+20 text is problematic.

In negotiations for the Rio+20 Declaration, there appears to be an attempt to define IPR as a barrier to “technology transfer” and to include involuntary technology transfer terms and obligations. Broad language from prior agreements and vague requirements for “access to information” may be interpreted as a basis to demand access to confidential business information, know-how, and trade secrets of American businesses.

Compelling dissemination of and/or “assured access” to IPR (including confidential business information, know-how, and trade secrets) will discourage future research and development investment. Such a practice can result in the immediate destruction of trade secrets.<sup>2</sup> Confiscation of IPR today will insure that there will be little available for tomorrow.

Confiscation of trade secrets can be even more draconian than compelling licensing of patent rights. While a patent right may still be licensed to others after a license has been granted (albeit, likely for reduced value), trade secrets would typically have zero remaining value after confiscation.<sup>2</sup>

Compelling dissemination and/or assured access to IPR rarely results in successful technology transfer. Organizations that would be victim to confiscation of their know-how are unlikely to be motivated participants in the dissemination process. Without the knowledge, commitment and buy-in of the IPR owner, the probability of a successful and safe implementation is greatly diminished.

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<sup>2</sup> Dissemination can destroy trade secret value in a number of ways: a) a trade secret no longer exists if the information does not derive independent value from not being generally known; b) a trade secret no longer exists if the information is not the subject of reasonable efforts to maintain secrecy; and c) whatever information survives (a) and (b) and continues to meet the definition of a trade secret is compromised in value by what has been lost to the portfolio.

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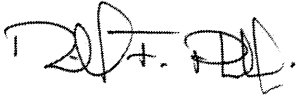
Efforts to diminish IPR can take many forms. We respectfully request removal from any working documents, declarations, protocols or agreements, for example, of language suggesting:

- "assured access" to technologies and/or confidential or trade secret information
- "facilitating clean technology dissemination to developing countries"
- "that IPR is a barrier to technology transfer"
- "non-voluntary technology transfer," or
- access to confidential or trade secret [environmental] information

Any references to technology transfer should be clearly qualified and conditioned to include only voluntary transfer of IPR on mutually agreed terms. The disclosure of these techniques and know-how to competitors in a competitive market would be devastating to innovators and IPR owners. The loss of, or even the potential loss, of trade secret rights would have a harmful effect on industry's ability to justify R&D investments into new green products and processes. This would most profoundly affect startup companies. Technologically-based startup companies rely on their only real asset - intellectual property - to attract investment.

We urge you to continue to champion the IPR protections for U.S. innovators by keeping IPR off of the agenda of the Rio+20 negotiations.

Sincerely,



Richard Phillips  
President