



二零一九年二月二十二日

100805

北京市西城区前门西大街1号

全国人民代表大会常务委员会法制工作委员会

沈春耀主任

## 主题: 《中华人民共和国外商投资法(草案)》反馈意见

尊敬的沈主任您好:

美国知识产权所有人协会(下称“IPO协会”)感谢全国人大常委会法制工作委员会(下称“人大法工委”)提供的对2018年12月26日发布的《中华人民共和国外商投资法(草案)》(下称“《草案》”)提交意见的机会。

IPO协会是一家代表各行业、各技术领域内拥有知识产权或相关权益的公司和个人的国际性行业协会。它拥有大约两百家会员以及超过一万两千多名个人会员。这些个人会员有些从属于公司会员或律所成员,有些是发明人、作者或律师会员。IPO协会的会员遍及三十多个国家。

IPO协会提倡有效和实惠的知识产权,为会员提供广泛的服务,包括支持会员在立法和国际事务中的利益、分析当前知识产权问题、提供教育和信息服务、以及向公众传播知识产权的重要性。

IPO协会感谢人大法工委在通过完善法律体系以促进外商投资所付出的努力。以下意见就《草案》第二十一和二十二条而提出。

### 第二十一条

IPO协会很高兴地看到《草案》第二十一条包括了知识产权使用费,这体现了知识产权的重要性。无论投资产生的知识产权是中国的还是国外的,对知识产权的使用方法都是多样的,由此而产生的收益也不仅仅限于许可使用费一种。因此,我们谨此建议对《草案》第二十一条作如下修改:

President  
**Henry Hadad**  
Bristol-Myers Squibb Co.

Vice President  
**Daniel J. Staudt**  
Siemens

Treasurer  
**Karen Cochran**  
Shell International B.V.

Directors  
**Brett Allen**  
Hewlett Packard Enterprise  
**Ronald A. Antush**  
Nokia USA Inc.  
**Estelle Bakun**  
Exxon Mobil Corp.  
**Scott Barker**  
Micron Technology, Inc.

**Thomas Beall**  
Corning Inc.

**Edward Blocker**  
Koninklijke Philips N.V.

**Amelia Buharin**  
Intellectual Ventures

Management, LLC

**Steven Caltrider**  
Eli Lilly and Co.

**John Cheek**  
Tenneco Inc.

**Cara Coburn**  
Roche, Inc.

**John Conway**  
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**Robert DeBerardine**  
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**Anthony DiBartolomeo**  
SAP AG

**Daniel Enebo**  
Cargill, Incorporated

**Louis Foreman**  
Enventys

**Scott M. Frank**  
AT&T

**Darryl P. Frickey**  
Dow Chemical Co.

**Gary C. Ganzi**  
Evoqua Water

Technologies LLC

**Tanuja Garde**  
Raytheon Co.

**Krish Gupta**  
Dell Technologies

**Bill Harmon**  
Uber

**John Harris**  
Ford Global Technologies LLC

**Heath Haglund**  
Dolby Laboratories

**Thomas R. Kingsbury**  
Bridgestone Americas

Holding Co.

**William Krovatin**  
Merck & Co., Inc.

**Michael C. Lee**  
Google Inc.

**Kelsey Milman**  
Caterpillar Inc.

**Micky Minhas**  
Microsoft Corp.

**Ken Patel**  
Procter & Gamble Co.

**KaRan Reed**  
BP America, Inc.

**Kevin Rhodes**  
3M Innovative Properties Co.

**Paik Saber**  
Medtronic, Inc.

**Matthew Sarbaroria**  
Oracle Corp.

**Manny Schechter**  
IBM, Corp.

**Jessica Sinnott**  
DuPont

**Thomas Smith**  
GlaxoSmithKline

**Todd N. Spalding**  
Alexion Pharmaceuticals

**Brian R. Suffredini**  
United Technologies, Corp.

**Gillian Thackray**  
Thermo Fisher Scientific

**Joerg Thomaier**  
Bayer Intellectual Property GmbH

**James J. Trussell**  
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**Mark Wadzzyk**  
Qualcomm, Inc.

**BJ Watrous**  
Apple Inc.

**Stuart Watt**  
Amgen, Inc.

**Ariana Woods**  
Capital One

**Bryan Zielinski**  
Pfizer Inc.

General Counsel

**Michael D. Nolan**  
Milbank Tweed

Executive Director

**Mark W. Lauroesch**

## 第二十一条

外国投资者在中国境内的出资、利润、资本收益、资产处置所得、知识产权收益 (包括但不限于权利转让费和许可使用费)、依法获得的补偿或者赔偿等，可以依法以人民币或者外汇自由转出。

## 第二十二条

IPO 协会对于《草案》第二十二条中禁止强制转让技术表示赞同。我们同时也看到，强制转让技术也可能因为某些不完善的行政法规而间接发生，因此我们谨此建议对《草案》第二十二条作如下修改：

## 第二十二条

国家依法保护外国投资者和外商投资企业的知识产权，保护知识产权权利人和相关权利人的合法权益，鼓励基于自愿原则和商业规则开展技术合作。

外商投资过程中技术合作的条件由投资各方协商确定，行政机关及其工作人员不得利用行政法规或其他手段强制转让技术。

随信附上本信的翻译版本。IPO 协会再次感谢人大法工委给予此次机会提出反馈意见。我们也非常愿意进一步交流或能有机会提供更多的信息。

此致  
美国知识产权所有人协会谨启



Mark Lauroesch 马克·劳勒施  
执行会长

附件：IPO 协会对《中华人民共和国专利法（修正案草案）》的反馈意见(英文版)



22 February 2019

Mr. Shen Chunyao  
Chairman, Legislative Affairs Commission  
Standing Committee of the National People's Congress of the People's Republic of China  
No. 1, Qianmen Street W  
Xicheng District  
Beijing 100805  
People's Republic of China

**Re: *The Foreign Investment Law of the People's Republic of China (Draft)*  
(December 26, 2018)**

Dear Chairman Shen:

Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the request for comments on the Foreign Investment Law of the People's Republic of China (Draft) ("Draft") dated 26 December 2018.

IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property ("IP") rights. IPO's membership includes about 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 membership spans over 30 countries.

IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

IPO commends the Legislative Affairs Commission for its efforts in promoting foreign investment through improvements to the legal system. Our comments below address Articles 21 and 22 of the Draft.

## Article 21

IPO welcomes the inclusion of IP royalties in Article 21 of the Draft, as this indicates the recognition of the importance of IP. Whether an investment resulting in IP is foreign or domestic, the usage of IP can take many different forms — and the related proceeds can take forms other than license fees. Therefore, IPO respectfully recommends that Article 21 be revised as follows:

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Foreign investors' capital contributions, profits, capital gain, and intellectual property right ~~royalties~~ proceeds (included by not limited to royalties from assignment and license) in mainland China as well as the compensation or indemnification they receive in accordance with law may be freely transferred out of mainland China in RMB or foreign exchange in accordance with law.

## Article 22

IPO agrees with the prohibition of compelling technology transfer in Article 22 of the Draft. We also understand that compulsory technology transfer might also take place indirectly due to imperfect administrative regulations. Therefore, IPO respectfully recommends that Article 22 be revised as follows:

The State protects the intellectual property rights of foreign investors and foreign-invested enterprises according to law, protects the lawful rights and interests of intellectual property right holders and relevant right holders, and encourages technological cooperation based on the principle of voluntariness and business rules.

The conditions for technological cooperation in the course of foreign investment are to be negotiated by the various parties to the investment, and administrative organs and their employees must not compel technological transfer through administrative regulations or other measures.

Attached please find this letter as translated. We again thank you for permitting IPO to provide comments and would welcome any further dialogue or opportunity to provide additional information.

Sincerely,



Mark Lauroesch 马克·劳勒施  
Executive Director

Attachment