

STATEMENT OF  
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**DEPUTY UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND  
DEPUTY DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
BEFORE THE  
**SUBCOMMITTEE ON INTELLECTUAL PROPERTY,  
COMPETITION AND THE INTERNET  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**  
**“International IP Enforcement: Protecting Patents, Trade Secrets and Market Access”**  
**JUNE 27, 2012**

**Introduction**

Chairman Goodlatte, Ranking Member Watt, and Members of the Subcommittee:

Thank you for this opportunity to discuss the United States Patent and Trademark Office’s (USPTO) efforts toward improving the international enforcement of intellectual property rights held by U.S. innovators – particularly, in the areas of patents, trade secrets and market accessibility.

Mr. Chairman, we are pleased to work with the Congress, other Federal agencies, and our stakeholders in promoting effective enforcement of IP rights around the world. We are proud that the USPTO provides training and resources that can help guide U.S. companies as they enter into global markets and especially when they face particular challenges to enforcing their rights. Our IP attaches stationed in U.S. embassies around the world, to name one such resource in particular, are frequently called on to play two significant roles. First, coordinate and identify ways to effectively address the challenges faced by U.S. companies. And, second, work with the host government to consider changes that improve the effectiveness of their IP systems.

We cannot overstate the importance of IP rights to our economy. The recent Department of Commerce report titled “Intellectual Property and the U.S. economy: Industries in Focus” found that IP-intensive industries support at least 40 million jobs and contribute more than \$5 trillion dollars to, or 35 percent of, U.S. gross domestic product (GDP). As stated by the Commerce Department’s Acting Secretary Blank, “Strong intellectual property protections encourage our businesses to pursue the next great idea, which is vital to maintaining America’s competitive edge and driving our overall prosperity.”

The USPTO’s IP-focused efforts include proactively facilitating a number of programs and initiatives detailed below.

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## **Technical Assistance/Capacity Building**

A significant problem with overseas IP enforcement is the lack of training available to foreign officials. The USPTO has developed rigorous capacity-building programs in key countries and regions targeting foreign enforcement officials, such as police, prosecutors, customs officials, as well as the judiciary. Recent technical assistance/capacity building activities include:

- In coordination with the Jordan Food and Drug Administration, the USPTO conducted a workshop on combating counterfeit medicines in Amman, Jordan, on April 23-24. The program was attended by Jordanian regulatory and law enforcement officials and included participation from The U.S. Food and Drug Administration, U.S. Department of Justice and the U.S. Immigration and Customs Enforcement, Homeland Security Investigations participated in the workshop.
- The USPTO organized a three-day symposium from April 18-20 in Jakarta, Indonesia for Association of Southeast Asian Nations (ASEAN) IP and law enforcement officials on “Enforcement of Intellectual Property Rights against the Trade in Counterfeit Goods.”
- The USPTO organized a series of seminars in five different cities in Indonesia from April 10-17 focusing on enforcement against trade in counterfeit medicines. More than 200 enforcement officials, including local police, prosecutors, and customs officials, participated in these seminars.
- The USPTO organized a week long seminar at its Global IP Academy from March 12-16 on “Investigating and Prosecuting IP Crimes” for a group of police, investigators, and prosecutors from the Association of Southeast Asian Nations (ASEAN).
- The USPTO helped organize and participated in a symposium March 8-9 on the use of alternative dispute resolution in intellectual property disputes at California Western School of Law in San Diego, California. The symposium brought together experts in the field from Brazil, Finland, Canada, the United Arab Emirates, Switzerland, Paraguay, and the United States.

## **Working with Judicial Officials Around the World**

- An ongoing challenge for U.S. businesses looking to protect their valuable intellectual property rights internationally are foreign judicial systems with little to no experience in adjudicating IP cases. It is impossible to have an effective enforcement regime without an effective court system. Transparency, fairness, and an understanding of the legal issues are all hallmarks of an effective judicial system.
- To quote a recent study on intellectual property and the judiciary, conducted by the USPTO: “The laws that govern IP are complex, and the technologies protected by those laws can be even more complex. Due to these intricacies, highly experienced judges are often needed to assure timely adjudication and accurate, consistent case outcomes.”
- In this respect, U.S. companies are at a great disadvantage when they face a court system which does not recognize the importance of IP and its integral role in a business’ success and local economic development. Similarly, prosecutors inexperienced in IP issues and the technical nature of such cases, many times do not, or are reluctant, to take on IP cases, important to U.S. companies who depend on their IP.

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- Accordingly, USPTO has taken an active role in working with the foreign judiciary and prosecutors to understand IP issues, through direct training and interchanges with U.S. officials, both judges and prosecutors who are experts in handling IP cases. Our judicial outreach and programs help develop expertise of our foreign participants. In doing so, they also create consistency and predictability for rights holders and can lower litigation costs by speeding up the adjudication process.

Some noteworthy examples of our efforts include:

- On May 22-24, the USPTO held a Judicial Colloquium on Intellectual Property Rights in Algiers, Algeria for the Algerian judiciary.
- On May 10-11, the USPTO held a program on Judicial and Prosecutorial Best Practices in Riga, Latvia for judges and prosecutors from throughout the Baltic region, including Latvia, Lithuania, Estonia, Finland, and Sweden. This program was particularly well-received, and the Lithuanian prosecutors have requested a similar program in Lithuania, for the country's police, prosecutors and judges.
- On May 8-10, the USPTO and the World Intellectual Property Organization (WIPO) held a Judicial Colloquium on Intellectual Property Rights at USPTO. The Colloquium brought together senior WIPO officials and judges from a number of different countries to learn about court administration and IP.
- On April 24, the USPTO, in association with the International Judicial Academy, hosted a visit by a delegation of Brazilian judges and provided training on patent, trademark, and copyright law, IP enforcement mechanisms, and the impact of IP protection on public health. The judiciary is singled out as the main stumbling block in enforcing IP laws for reasons such as lack of training, lack of expertise, and overall lack of knowledge regarding IP issues. This program focused on the US approach to IP enforcement and included topics such as general knowledge of international IP laws and their related US interpretation, criminal enforcement of trademarks and copyrights, internet service provider liability, evidentiary standards in IP case.
- On April 16-18, the USPTO, in conjunction with Georgetown University, held a Workshop for Judges on Intellectual Property Law and Strategic Management for Sustainable Economic Development. The Workshop was held in Rio de Janeiro, Brazil and was designed to provide a forum for Brazilian judges to discuss how IP law and strategic management can contribute to economic growth.
- On April 2-6, the USPTO hosted a visit of twenty Sri Lankan judges, including one Supreme Court Justice and three High Court Judges, and briefed them on IP enforcement in the United States and the critical role of the judiciary.
- On January 17-19, in coordination with the International Intellectual Property Institute (IIPI), the USPTO held a symposium on Intellectual Property Rights Courts at USPTO's Global Intellectual Property Academy (GIPA), which brought together judges, attorneys, and IP officials from countries throughout the world. Feedback from the symposium fed into a survey conducted by USPTO and IIPI on the growing use and best practices of specialized IP courts throughout the world.

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## **Global Intellectual Property Academy**

Through our Global Intellectual Property Academy (GIPA), we have greatly expanded IP rights training, capacity building and technical assistance offerings to promote improved IP protection and enforcement.

- In FY 2011, GIPA conducted 141 training programs on intellectual property protection and enforcement topics both domestically and abroad for 4,338 foreign government officials representing 137 countries. During that period, GIPA trained 964 representatives of U.S. small or medium sized enterprises (SMEs) on intellectual property and enforcement at eight programs offered at locations around the United States.
- In the first half of FY 2012, GIPA conducted 54 training programs on intellectual property protection and enforcement topics both domestically and abroad for 2,021 foreign government officials representing 78 countries. During this period, GIPA trained 2,018 people employed at U.S. small or medium sized enterprises (SMEs) on intellectual property and enforcement at 16 programs offered in the United States.
- GIPA has produced seven e-learning modules on intellectual property protection and enforcement, six of which are available in languages other than English.. Topics include all areas of intellectual property: Patent Protection, Overview of Trademarks, Copyright: Encouraging and Protecting Creativity, Geographical Indications, International Standards for the Enforcement of IP, Trade and IP, and Introduction to the Patent Cooperation Treaty. The free e-learning modules have received more than 20,000 visits since they were first placed on the USPTO website.

## **IP Attaché Program**

USPTO's overseas IP Attachés support many of the efforts already described and facilitate IP activities in their host country. The program was formally instituted in 2006 to promote high standards of IP protection and enforcement internationally for the benefit of U.S. economic and political interests abroad. Since its creation, the IP Attaché Program has placed individuals in seven countries: Thailand; China; Russia; India; Brazil; and Egypt.

Our attachés promote U.S. government IP policy internationally; help to secure strong IP provisions in international agreements and host country laws; and encourage strong IP protection and enforcement by U.S. trading partners for the benefit of U.S. rights holders. More specifically, the attachés advocate U.S. Government IP policy, interests and initiatives; assist U.S. businesses on IP protection and enforcement; conduct training activities with host governments; advise representatives of the host government or region on U.S. intellectual property law and policy; help to secure strong IP provisions in international agreements and host country laws, and monitor the implementation of these provisions; and advise officials at the USPTO, Department of Commerce, USTR and the Departments of State, Treasury and Justice, on the host government's IP system.

In addition to our attaché postings, we have two USPTO employees on detail to the Office of the United States Trade Representative (USTR) and U.S. Permanent Mission to the United Nations Office in Geneva, Switzerland supporting U.S. objectives related to IP matters that arise in the World Trade Organization, World Intellectual Property Organization and other international organizations.

## **TRIPS Agreement**

The USPTO has worked closely with the USTR in ongoing IP discussions in the WTO regarding the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement). The USPTO also

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advised USTR during the WTO accession process of several countries by evaluating IP laws, regulations and practices of countries in the process of accession, and advising USTR as to TRIPS Agreement obligations.

We continue to provide expert technical advice on the full range of substantive IP protection and enforcement issues to the USTR in connection with on-going trade negotiations. The USPTO plays an active role in the ongoing Trans-Pacific Partnership negotiations, and the implementation and monitoring for compliance of other bilateral and free trade agreements.

### **Bilateral Engagement with China**

The USPTO continues to engage with China on a variety of fronts to improve IP enforcement:

- On March 19-21, the USPTO and USTR co-led the U.S. delegation for a meeting of the IP Working Group under the U.S.-China Joint Commission on Commerce and Trade. The meeting included a number of enforcement-focused discussions, including trade secrets issues and enforcing trademarks in the online environment.
- On April 11 and 12, USPTO participated in the Ambassador's IP Roundtable in Beijing. This annual event this year focused on the Information Communication Technology (ICT) sector and the online environment. We discussed the importance of IP protection and enforcement and highlighted the role the USPTO team plays in the mission in working with rights holders to enforce their rights in China.
- On April 27, attorneys from the USPTO presented on protecting and enforcing intellectual property rights in China during the U.S.-China People's Friendship Association's bi-annual meeting in Washington, DC.
- On May 28-30, the USPTO and the U.S. Court of Appeals for the Federal Circuit co-sponsored an intellectual property adjudication program with Renmin University of China, the China Law Society, the Bar, and others. More than 1,200 people attended the three-day program, including nearly three hundred judges from China's judiciary; hundreds of lawyers and business people from the United States and China; several hundred Chinese academics; and, most importantly, seven judges from the Federal Circuit, as well as a like number of judges from the Supreme People's Court. There was an "en banc" Q-and-A session between the Federal Circuit and China's Supreme People's Court, a moot court involving a common fact pattern that resulted in a nearly identical adjudication on the same set of facts, and breakout sessions on such topics as pharmaceutical patent adjudication, copyright (including online infringements) and trademark developments (including "squatting"). The program was a milestone in bilateral judicial, intellectual property and rule of law exchanges.

In early June, USPTO attorneys met with several Chinese administrative enforcement agencies to discuss concerns raised by U.S. right holders and reached agreement with several of these agencies to work with such right holders to develop new measures and enforcement practices to better facilitate the protection and enforcement of IP in China.

### **Patents in China**

In 2011, the USPTO convened four roundtables (three in China and one in the U.S.) with U.S. industry representatives and published a *Federal Register* notice to solicit input on their experiences enforcing

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patents in China. The input received will be compiled into a report which will be published and made available on our website. The report will help guide USPTO's engagement with China on patent enforcement.

### **Trade Secrets Protection**

In light of the recent and increasing concerns by U.S. right holders on the importance of having effective mechanisms to protect their trade secrets from misappropriation, the USPTO is emphasizing this area in our domestic and foreign policy objectives, particularly as they relate to China. USPTO attorneys are undertaking a comprehensive study of Chinese laws and other legal measures governing trade secrets and are discussing with Chinese government officials changes that can facilitate a more effective protection regime in China. We are also using this information to update the "China IP Toolkit" on Stopfakes.gov with a section dedicated to trade secret protection and enforcement. This component of the Toolkit will provide an overview of China's major laws and other measures affecting trade secrets and include basic steps a company can consider to protect its trade secrets in China, including not only information on judicial and administrative enforcement mechanisms but also basic strategies companies can employ to help prevent misappropriation from occurring.

Also, the USPTO is currently developing training modules on trade secrets for SMEs and enforcement officials. These modules will include an overview of trade secret law in the United States, measures to protect trade secrets, criminal and civil enforcement procedures and international trade secret protection and enforcement.

### **IP Small Claims**

On May 10, 2012, a roundtable of intellectual property experts convened at the George Washington University Law School. Co-sponsored by the USPTO and the U.S. Copyright Office, the purpose of this roundtable meeting was to consider the possible introduction of small claims proceedings for patent and/or copyright claims.

The day began with framing of the challenge: offering access to IP justice to creators least resourced but often most in need, in an age in which creative works (both in the copyright and patent domain) are more subject to disputes, of all magnitude, than ever before. Presentations followed on the small claims system in the UK, and the U.S. Constitutional limitations on the nature of such procedures, including the Seventh Amendment right to a jury, Article III judicial power, and due process.

In breakout sessions on patents and copyrights, attendees discussed the need for and ways to structure a small claims system in both areas.

This productive session was a first step in determining whether and how it makes sense for the government to help set new parameters for the resolution of small claims in the patent and copyright areas. The USPTO will continue to work with the Copyright Office on taking these ideas forward.

### **International Copyright Leadership**

While outside the scope of this current hearing, I would like to note that the USPTO has also demonstrated key leadership in the copyright arena. Internationally, we have worked within WIPO to reconvene a Diplomatic Conference to conclude action on the WIPO Audiovisual Performances Treaty. A Diplomatic conference on this treaty concluded yesterday this week in Beijing, China. We have also engaged other WIPO Member States to address copyright exceptions for the benefit of blind persons. Finally, we have worked with our partners at the Department of Commerce to continue to address

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leading-edge policy issues at the intersection of copyright, creativity, and innovation in the Internet economy.

### **Korea-U.S. and Colombia-U.S. Free Trade Agreement Implementation**

Free trade agreements have played an increasingly important role in promoting modern IP enforcement legislation with our trading partners. USTR together with the USPTO, worked with Korean and Colombian officials to guide implementation of the intellectual property enforcement provisions of the free trade agreements with the United States. That implementation was completed this year. Among other things, our efforts helped secure improved legislation on IP enforcement for U.S. and foreign right-holders. These include improved ability to collect damages for infringement, destruction of materials and implements used in infringement, and securing evidence on counterfeiting distribution channels. In the end, these provisions will help U.S. companies to more effectively enforce their IP rights in these important markets.

### **Chief Economist**

The USPTO's Office of Chief Economist (OCE) advises the Under Secretary and senior USPTO management on the economic implications of policies and programs affecting intellectual property protection and enforcement in the United States.

Most recently, the OCE hosted a major international conference in November titled "Patent Statistics for Decision Makers" in collaboration with the Organization for Economic Co-operation and Development (OECD), the European Patent Office, and the World Intellectual Property Organization. The OECD is also supporting efforts leading to the publication of special issues on "intellectual property and innovation" in three major economics journals – the International Journal of Industrial Economics; the Journal of Industrial Economics; and the Journal of Economics, Management, and Strategy.

In April, the Secretary of Commerce released a report written by the OCE in partnership with the Economics and Statistics Administration. Titled "Intellectual Property and the Economy: Industries in Focus," this report showed the 75 most IP-intensive industries in the U.S. accounted in 2010 for 40 million jobs, 35.5% of overall GDP, and 61% of all merchandize exports. This report has had a large impact, being downloaded from the USPTO website more than 82,000 times in the first month after its release.

### **Conclusion**

Mr. Chairman, we look forward to continuing to work closely with the Committee, our colleagues within the Administration and our stakeholders to improve the resources available to help U.S. companies succeed in global markets and to work with our foreign counterparts to promote the protection of IP rights.

We appreciate your continued support for the employees and operations of the USPTO.

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