

Statement of

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Before the
Senate Judiciary Committee

**Hearing on “Counterfeit Goods and their Impact on Consumer Health and Safety”
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Chairman Grassley, Ranking Member Leahy and members of the Committee:

Thank you for the opportunity to appear before you today.

The United States Patent and Trademark Office (USPTO) advises the President, through the Secretary of Commerce, on national and international intellectual property (IP) policy issues and assists foreign governments and international intergovernmental organizations on matters of intellectual property matters.

The USPTO advises on a full range of intellectual property policy and enforcement issues, including patents, trademarks, copyright, and trade secrets, as well as administrative issues. For purposes of today’s hearing, I will focus on the enforcement of intellectual property rights which is integral to an effective intellectual property regime. Addressing the continuing problem of counterfeiting on a global scale is an Administration priority. And, counterfeiting activity that threatens the health and safety of consumers is of particular concern.

Counterfeiting is an opportunistic crime with a focus that varies with changes in technology and market demand. When technology was more limited and the demand was for luxury goods, the consumer was most likely to see counterfeit luxury brands and apparel for sale. As technology has advanced and consumer demands have changed, the market contains illegal counterfeits for a wide range of goods, including pharmaceuticals, food products, herbicides, pesticides, toys, automotive parts, aircraft parts, and electronics, to name a few. One of the most insidious aspects of unlawful products is that consumers are now more likely to be taking higher health and safety risks when they unwittingly buy these products. For example, a consumer takes a knowing risk when he or she purchases a \$10,000 name-brand watch for \$100 at a flea market. But often there are no similar warning signs that the cardiac or cancer medicine the consumer is about to buy is counterfeit. Counterfeiting is not a victimless crime. An important part of the USPTO’s mission is to make sure that issued patents and trademarks are effectively enforceable, especially when infringing goods pose health or safety dangers.

The USPTO engages with government officials in various countries to improve legislation and regulations that promote effective intellectual property systems. Such laws and regulations create the necessary framework to support IP enforcement, but having laws on the books only goes so far. The inclusion of the enforcement section in the World Trade Organization Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) highlights this fact on a multilateral basis. All countries face significant challenges and harms resulting from counterfeit goods. The inclusion of enforcement provisions in the intellectual property rights chapters of free trade agreements also reflects the integral role of enforcement in ensuring adequate protection of intellectual property.

In the Office of Policy and International Affairs at the USPTO, we help provide global leadership and education on intellectual property policy and awareness. This includes working with those in foreign governments responsible for enforcement of intellectual property rights in their countries, generally focusing on civil, criminal, and border enforcement, covering all aspects of intellectual property. On the domestic front, we provide policy and technical advice on legislation impacting civil, criminal, and border enforcement of intellectual property laws to promote a climate that respects intellectual property.

With respect to enforcement, we work in close coordination with the Administration's Intellectual Property Enforcement Coordinator and also partner with the National Intellectual Property Rights Coordination Center. We provide technical and policy guidance on foreign laws, regulations, and practices that impact the effective enforcement of civil, criminal, and border provisions intended to combat trafficking in counterfeit goods. Our work addresses both brick and mortar sales outlets and online sales of counterfeit goods. We also provide technical support in the negotiation of free trade agreements that promote strong and balanced protection and enforcement of intellectual property rights.

This expertise provides the USPTO with the tools needed to build programs for foreign audiences, targeting judicial regimes, civil and criminal procedures, border measures, and administrative regulations relating to the enforcement of intellectual property laws. These capacity building programs are central to our efforts to address counterfeiting around the world.

Through USPTO's Global Intellectual Property Academy, we develop and implement capacity building programs, in partnership with U.S. enforcement agencies, on the effective enforcement of civil, criminal, and border provisions. These programs are held both at USPTO Headquarters in Alexandria, Virginia, and around the globe. Providing information and facilitating discussion on effective methods to combat counterfeiting, promulgating effective anti-counterfeiting policies, including public awareness, and adjudicating cases in a timely manner continue to be a focus of our technical assistance program.

In FY 2015, the USPTO, through the Global Intellectual Property Academy and the IP attachés in the field, conducted 49 enforcement programs both domestically and abroad for foreign officials. Of these enforcement programs, 13 were designed with a specific focus on the issue of counterfeiting. The USPTO's efforts to promote balanced intellectual property systems and effective enforcement of intellectual property rights are assisted by the activities of the IP

Attaché Program. The attachés provide invaluable support in promoting USG policies for the protection and enforcement of intellectual property on the ground.

The IP Attaché Program is an important asset that supports the USPTO's efforts. IP attachés are IP experts who serve as U.S. diplomats in Embassies and Consulates abroad. As a former IP attaché stationed in the United States Consulate General in Guangzhou, China, I helped to directly facilitate some of this work. IP attachés promote U.S. IP policies, including high-quality and balanced IP systems, including effective protection and enforcement, in their host countries and regions, for the benefit of U.S. stakeholders. The IP attaches work closely with USPTO and the Office of Intellectual Property Rights (OIPR) in advancing the commercial interests of U.S. companies in foreign markets where they are experiencing barriers to market access. The attachés are supported by country-specific teams of specialized attorneys in the Office of Policy and International Affairs.

The origins of the IP Attaché Program may be traced to the Uruguay Round negotiations that established the World Trade Organization (WTO). At that time, complex negotiations over trade-related IP issues were ongoing in Geneva. The Japan Patent Office posted an IP attaché in Geneva in 1992 to leverage the attaché's technical expertise in the negotiation of the TRIPS Agreement. USPTO followed suit with the posting an IP attaché to the U.S. Mission to the WTO in Geneva in 1993. About 10 years later, due to the importance of IP matters in China, USPTO posted an IP attaché to the U.S. Embassy in Beijing. Based upon the success of these postings, USPTO expanded the program in the fall of 2006 to include new attaché positions in Rio de Janeiro, Moscow, New Delhi, Bangkok, and Cairo.

USPTO currently has 13 IP attaché positions. This includes attachés based in Rio de Janeiro, Moscow, New Delhi, Beijing, Guangzhou, Shanghai, Bangkok, Mexico City, Kuwait City, Brussels, Lima, and two attachés in Geneva. When our IP attaché in Moscow completes his assignment this year, we plan to replace his position with a new position in Kyiv to take advantage of new opportunities in Ukraine. All of our IP attachés have regional responsibilities, except for those in China and Geneva.

One of our IP attachés in Geneva is detailed to the State Department to serve at the U.S. Mission to the UN Organizations, and covers the World Intellectual Property Organization and IP matters arising in other UN organizations. The other attaché is detailed to the Office of the U.S. Trade Representative (USTR) to serve at the U.S. Mission to the World Trade Organization. The other attachés have been assigned to the U.S. Foreign Commercial Service (USFCS) as Limited Appointees. The attachés all have a two-year term, which is extendable to a maximum of five years.

The attachés' fundamental role is to advocate U.S. government IP policy positions for the benefit of U.S. stakeholders through direct advocacy with host governments, seeking changes in policies, laws, and regulations related to intellectual property; educating host government officials on IP matters, including training of judges, prosecutors, patent and trademark examiners, customs officials, police and policy makers; and building grass roots support for U.S. policy objectives by conducting public awareness programs on intellectual property.

The IP attaché often brings to our attention specific problems facing U.S. stakeholders and also works closely with other U.S. agencies in the region.

Our IP attachés have provided significant benefits to U.S. rights holders, based upon the feedback that we have received. They continue to be highly valued by other USG agencies, including the USFCS, USTR, and the U.S. Department of State. We believe that the IP attachés' expertise is a key component of their success. This allows them to address everything from broad policy issues to specific legal problems. Also important is the USPTO's significant guidance and support provided to the attachés. We are proud of this successful program and the contributions that it makes.

Thank you.