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Judge Paul Michel (Ret.), Board Member
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Frank Cullen, Executive Director

January 30, 2024

Via Electronic Submission

Ambassador Katherine Tai
United States Trade Representative
Office of the United States Trade Representative
Winder Building 600 17th St. NW
Washington, D.C. 20508

Re: Docket No. USTR-2023-0014

Dear Ambassador Tai,

The Council for Innovation Promotion (C4IP) is pleased to submit this response to the December 6, 2023 Request for Comments and Notice of Public Hearing Regarding the 2024 Special 301 Review (Docket Number USTR-2023-0014).

C4IP is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere. Founded and chaired by former directors of the U.S. Patent and Trademark Office from previous Democratic and Republican administrations, our nonprofit organization has distinguished itself as a valued partner to those considering policies impacting America's IP system.

In 1988, Congress mandated an annual report by the U.S. Trade Representative (USTR) to review the global state of IP rights protection and enforcement. Specifically, the law directs USTR to identify “foreign countries that — (A) deny adequate and effective protection of intellectual property rights, or (B) deny fair and equitable market access to United States persons that rely upon intellectual property protection.”¹

Since 1988, the U.S. government has used the Special 301 Report to encourage and maintain effective IP protections with trading partners by identifying foreign laws, policies, and practices that undermine our national IP priorities. These efforts bolster U.S. industry by informing public and private sector leaders of the challenges facing American commerce in foreign markets and, through public exposure, pressuring violators to bring their IP enforcement in line with U.S. standards.

According to the USPTO, “direct employment in the IP-intensive industries totaled 47.2 million jobs in 2019.”² The Special 301 Report — and the leverage it offers to trade negotiators — helps protect these jobs and bolster innovation both here and overseas.

¹ 19 U.S.C. § 2242.

² Andrew A. Toole, Richard D. Miller, and Nicholas Rada, *Intellectual Property and the U.S. Economy: Third Edition U.S. Patent and Trade Office* (2016), <https://www.uspto.gov/ip-policy/economic-research/intellectual-property-and-us-economy#:~:text=In%20total%2C%20the%20IP%2Dintensive,%2C%20or%2044%25%20of%20employment.>

But since 2021, the Special 301 Report has strayed from fulfilling the requirements of its legal mandate. As just one example, consider the treatment of compulsory licenses.

Historically, the United States and its trading partners have recognized compulsory licenses as a tool of last resort. When a country has violated this norm — and mandated the licensing of patents in a manner inconsistent with the provisions of the TRIPS Agreement and the Doha Declaration on the TRIPS Agreement and Public Health, or even had policies in place suggesting it might do so — the Section 301 Report has criticized such behavior in strong terms.

In its 2015 Report, as just one example, USTR conveyed “[concerns] about the lack of clarity surrounding legal procedures under the Indonesian patent law in connection with the grant of compulsory licenses;” promised to “monitor India’s application of its compulsory licensing law” and requested “clarity from the Government of India regarding the compulsory license decision-making process;” and “[encouraged] Ecuador to provide clarification on its processes related to the compulsory licensing of pharmaceuticals.”³

In reports since 2021, though, USTR has shied away from criticizing compulsory licenses or the policies that allow for them. The 2021, 2022, and 2023 Reports neglect to highlight a single concern regarding compulsory licenses.⁴

The timing of this changing posture is troubling. Weak IP rights abroad hurt U.S. jobs, punish American innovators, and give an edge to those who pilfer or otherwise ignore IP rights.

The United States has long appreciated the importance of strong, predictable IP rights. As you and your staff prepare the 2024 report, we encourage you to deliver the report that is called for by the law — and which candidly assesses IP protections and market access restrictions worldwide.

I welcome the opportunity to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Cullen', is positioned above the typed name.

Frank Cullen
Executive Director
Council for Innovation Promotion (C4IP)

³ United States Trade Representative, *2015 Special 301 Report* (2015), <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

⁴ See e.g., United States Trade Representative, *2021 Special 301 Report* (2021), [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf); United States Trade Representative, *2022 Special 301 Report* (2022), <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>; United States Trade Representative, *2023 Special 301 Report* (2023), <https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf>.