

Under Secretary of Commerce for IP & Director of the USPTO David Kappos

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WIPO Symposium of IP Authorities – Promoting Innovation & Creativity

*“The America Invents Act and a Global Call for Harmonization”*

*Remarks as prepared for delivery*

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- Good morning everybody and thank you for that introduction.
- I want to thank the Director General Gurry and the World Intellectual Property Organization for convening this Symposium just days before the WIPO General Assembly—and incidentally, just days after President Obama signed historic U.S. patent reform legislation into law—giving us all a chance to reflect, and consider shifting IP trends around the globe, in order to frame our conversation for the next week here in Geneva.
- And it’s especially fitting that over the summer several of us gathered here today have held conversations with various stakeholders discussing the importance of patent law harmonization, because when we take a moment to examine the way all of our countries are doing business—it’s no question that information and commerce are cutting across global borders with increasing speed. And as innovators seek to tap into markets abroad, it is imperative that the international patent system provide

a consistent, cost-effective way to obtain reliable patent rights in multiple jurisdictions.

- So this morning I'll make the case for the urgency of harmonization, a mandate **to better manage the collective challenges our global IP system faces** in a 21<sup>st</sup> century economy. The public *must* have confidence that the patent system is striking the right balance between incentives to innovate and access to those new innovations. Through global synergy and collaboration, we have a unique opportunity, right away, to meet these challenges—and I believe it is imperative we do that, and act by moving towards a more standardized global patent system.
- Because while the dynamics of our economic landscape may be shifting, the importance of IP rights is not. IP is the premiere global currency for creating value for services and products, for all innovators, in all markets, and in all countries.
- Yet with our IP systems so varied—innovators and patent offices around the world have to repeat the same work, time and time again—countless times per year at different patent offices—ultimately wasting billions of dollars, and clogging the patent pendency pipeline, while devaluing that currency of innovation.

- The stress on our systems not only stifles our operational ability as we stare at alarming patent backlogs, it also impedes our ability to grow new jobs, compete in burgeoning markets, and fertilize new products and services that address marketplace needs.
- To devise solutions that cut down workflow redundancies—we must collaborate. And to truly enable the global innovation system to flourish, we must take concrete steps to harmonize our substantive patent laws. Greater harmonization is essential to the efficient functioning of our respective patent systems, and bears the potential to unleash jobs—driving real growth for all of our economies.
- But our efforts in the 21st century need to start by using a different approach than the failed patent law harmonization attempts of the past.
- Our discussions must be rooted in global best policies and best practices—basic principles we agree define a 21st century patent system that optimizes technological progress.
- And, we must learn why each of us considers a specific approach to be a best practice worthy of inclusion in a global gold standard IP system.

- And **as was learned** from the Substantive Patent Law Treaty talks held at the WIPO in early 2000, taking into account the perspectives of **developing countries** is essential to establishing priorities for any conversation regarding international norms—and to gain a better understanding of our needs, our concerns, and our flexibilities.
- Worldwide, there is broad agreement that the public gains when the world’s experts in areas of science and technology disclose their advances in a manner that seeds new ideas, prompts new approaches, and teaches exactly what has come before.
- That is why I hope we can address issues about patentability standards, scope of enforcement, definitions of prior-art and a host of other topics. These matters should be debated so we have a precise understanding of the perspectives behind our varying policies and their impacts on efficiencies in our offices.
- Discussions should also consider pre-grant prior art submissions by third parties, and what laws best promote full disclosure, early disclosure, and maximum dissemination of information.

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- But let me be clear: patent law harmonization is not about imposing the will of any country or group of countries onto another or about challenging patent sovereignty in our IP eco system.
- Ladies and gentleman, a discussion about harmonization is an effort aimed at relieving burdens that are straining all of our IP systems.
- We've seen what can be accomplished through multilateral agreements like the Patent Cooperation Treaty and bilateral relationships like the Patent Prosecution Highway (PPH)—they save tens of thousands of examiner hours and millions of dollars between patent offices.
- More than 8,000 applications will have made their way through the US PPH by the end of next week, and our goal now is to streamline procedures through a new iteration of PPH that we refer to as PPH 2.0.
- The success of PCT and PPH gives us a chance to hold a critical lens up to examination standards, and envision a system where administrative protocols are ironed out and backlogs no longer

keep us up at night. If we can eliminate redundant work, and free up resources for higher quality patent reviews, we ultimately generate the economic lift that comes from moving ideas to the market place more efficiently.

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- Now, no one expects that it will be easy to reach substantive harmonization conclusions. But the leaders of the IP world need to own our role in the international IP community. We need to lead, and lead from the front.
- To this end, the Council of the European Union took a critical harmonization step of its own through the creation of a single patent system—one that would replace the status quo of individually validated and enforceable rights in each country in Europe. While the new rules are still in the process of adoption, the USPTO applauds the EU's leadership in streamlining and strengthening its IP architecture. Not only will this reduce patenting costs for all countries, but it represents a step towards greater harmonization generally.

- Inspired by the success of the EU, the United States undertook a step of our own in cooperation with other members of APEC, organizing a conference on substantive harmonization in March of this year in Alexandria, VA.
- We then took the call for action to London, and a month later engaged our European partners on judicial elements of harmonization in Brussels. And then in June we followed up with the world's largest patent offices in Tokyo and subsequently in July held talks in Munich, including the German, Dutch, UK and French patent offices, along with the EPO and JPO.
- So it's fair to say the United States is serious about getting harmonization done. And we're acting with urgency.
- Fundamentally, we believe there is clarity on this: from patent office to patent office, the will to enhance our collaborative capacity exists and the will to **finally** harmonize our patent laws exists.

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- And let me assure you that the United States will continue to do its part. In a truly historic moment, last Friday President Obama

signed sweeping patent reform legislation into law, bringing the United States patent system not only in line with other patent systems, but truly into the 21<sup>st</sup> century. In fact, I submit to you that the US has leapfrogged all others, and now boasts the world's only 21<sup>st</sup> century patent system.

- The historic legislation transformed US patent laws to account for the modern stresses and expectations of a fast-moving global economy. And we're encouraging our user community, globally, to be a part of the implementation process that will span the course of 18 months, by regularly visiting and commenting at the internet microsite we already have up and running.
- The AIA will enhance the US patent system by offering greater certainty about patent rights, and alternatives to expensive litigation when patent rights are disputed. In fact, the new law embodies the most sweeping reforms to the US patent system in 175 years.
- The legislation:
  - transitions the U.S. from a focus on what inventors do in secret, to a focus on what they do to make their inventions

available to the public by disclosure or sale of a product or by other means. It eliminates the Hilmer doctrine, eliminates the best mode defense, and moves other areas of US patent law to international norms.

- The *Act* also allows the USPTO to implement a fast-track examination option under which the patent examination process will be completed within 12 months. Getting a key patent can be critical to an entrepreneur hoping to raise capital and grow their business, with 76% of startups in the US reporting that venture capital investors consider patents when they make funding decisions. We'll now be equipped to accelerate such key patents into the marketplace as soon as next week when the Track 1 program will be available to all applicants.

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- Prioritized examinations and other parts of the AIA will help operationally, but the legislation is ultimately a recognition that we live in an age where technological change can occur in the blink of an eye. So, the larger mandate is to create a smart, agile and nuanced Patent and Trademark architecture that can adapt to evolving business needs and leverage modern tools to address them.

- Implementation of the AIA is also a tremendous down payment on the aggressive jobs agenda President Obama has laid out for the United States. It will establish a more objective and certain patent process and speed the delivery of innovative goods and services to the marketplace. And by harmonizing the American patent process with the rest of the world, by transitioning to a more efficient and predictable FTF system, entrepreneurs will simultaneously be able to market products in the U.S. and for export from our country to all corners of the globe.
- And to be clear, the US is undertaking these essential reforms not as part of an international negotiation, or to gain leverage in a quid-pro-quo bargain, but because it is the right thing to do. While the debate over US patent reform has waged on for years, as Winston Churchill once aptly said, "The American people always do the right thing -- after they've tried every other alternative."

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- Our new law in the US is anchored in the desire to more effectively match the rate & pace of the patenting process to the rate & pace of invention, and the rate & pace of commercialization. But in saying this we realize that there is

adifference between invention and innovation—**the latter is the economically relevant version of the former**. So, the goal of the new *America Invents Act* is to create not just the simplest possible patent system, or the most precise patent system, but rather the most innovation-friendly & inventor-friendly patent system that reduces costs, levels the playing field for businesses small& large, and spurs economic growth.

- Moreover, this major legislation will boost productivity by enabling greater cross-border work-sharing between the USPTO and other patent offices.

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- So by meeting with our partners around the world, and by reforming our patent system—the USPTO has demonstrated a strong conviction to ensure that the 21st century IP dialogue is a global one.
- **We hope this stands as a hallmark example of renewed US stewardship, globally, for economic and social opportunities for people everywhere.**
- This in turn puts the onus on the world’s IP leadersto decide whether we want to enhance and accelerate progress. I believe we

owe it to all of our countries' citizens to move forward right away with discussions aimed at optimizing our global patent system. We owe them an end to excuses. We owe them an end to stalemate. We owe them leadership and success.

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- I look forward to thoughtful discussions on harmonization with all of you. Discussions that will empower us to build a global system that incubates great ideas; offers the highest quality reviews; swiftly brings the best products to the marketplace; benefits innovators and governments alike; and writes the next great chapters of economic growth for us all.
- I urge that we begin the process of patent law harmonization anew, now. I urge us all to search for common ground. I urge us all to let best global policy and best practices be our guide. Because, to paraphrase from Mr. Churchill again—seldom before have so many depended so much on the efforts of...us.
- Thank you.

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