Congress of the United States
Washington, DC 20510

July 15, 2015

Director General Francis Gurry
World Intellectual Property Organization
34, chemin des Colombettes
CH-1211 Geneva 20, Switzerland

Director General Gurry:

We write to express our grave disappointment in the manner by which the World Intellectual Property Organization ("WIPO") adopted revisions to the Lisbon Agreement for the Protection of Appellations of Origin ("Agreement"). We believe that this expanded Agreement allowing for the registration of geographical indications will have significant negative ramifications for businesses world-wide that depend on the use of common or generic names or on the integrity of established trademarks. Further, we are seriously concerned about the way that the Agreement has been and will likely continue to be funded – through diversion of fees paid to the trademark and patent registration systems. We believe that it is inappropriate that the funding mechanism for the Agreement will be supported by trademark stakeholders that will be adversely impacted by the agreement.

As the multilateral organization charged with generating consensus on intellectual property issues, WIPO had a unique opportunity to foster such an agreement on geographical indications. Consistent with longstanding WIPO practice, and in the interests of transparency and basic procedural fairness, the views of all WIPO members should have been taken fully and equally into account in the Lisbon Agreement revision process. The involvement of the full WIPO membership in treaty revisions is a precedent that has been followed for the last quarter century out of a recognition that the legitimacy of WIPO treaties depends on meaningful consideration of widely varying global viewpoints on intellectual property policies. A WIPO treaty must not be a vehicle for a select few countries to impose their preferred system throughout the world.

Yet in a break with past precedent, WIPO members were not allowed meaningful participation rights and there was not a consensus of all members in favor of adoption of the Agreement. We trust that you share our view that the disregard for the concerns of the United States and so many other WIPO members was wrong and should not become the model that this organization adopts moving forward.

Moreover, WIPO allowed the new agreement to be pushed through and adopted, over the objections of multiple WIPO members, a new agreement that now includes geographical

indications for a wide range of agricultural and non-agricultural products, without sufficient protections for users of common or generic names or for prior trademark holders around the world. Without adequate safeguards, companies in the United States and other countries will experience diminished sales opportunities and eroded intellectual property rights in countries that threaten to block their use of common food names on a world-wide basis or negatively impact existing protections for their established trademarks.

Many WIPO members rely on trademark protection and depend on continued generic use to create jobs and boost economic development. Because of the flawed process and outcome, we believe that the result of the Agreement cannot be viewed as a legitimate international agreement. In addition, those flaws throw into question the ability of WIPO to serve as a constructive forum to promote cooperation and harmonization of intellectual property protection regimes. To ameliorate this situation, WIPO must ensure that implementation of this Agreement, and technical assistance conducted pursuant to the Agreement, be done in a balanced way that adequately protects the interests of trademark owners and users of generic food names. Without such action, WIPO's status as an organization that reflects the consensus of its members will remain severely damaged.

In addition, we are very concerned about the way in which the Agreement is being funded. It is our understanding that the existing Lisbon system runs at a chronic deficit, despite an obligation on Lisbon parties to make contributions to the system. Moreover, it is our understanding that fees collected from other registrations, such as the Madrid Agreement and the Patent Cooperation Treaty, finance this substantial deficit. The companies that rely on WIPO's patent and trademark registration systems pay considerable fees to protect their own intellectual property, including trademarks. It is entirely inappropriate to expect these businesses to bear the burden of funding the costs of the Lisbon Agreement. We strongly object to subsidization of the Lisbon system by patent and trademark applicants.

As the WIPO Program and Budget Committee meets this week to discuss 2016-2017 program and budget items, we urge it to take affirmative steps to remedy this funding inconsistency without delay. WIPO should make the Lisbon mechanism transparent and provide for a full accounting of its funding sources. Further, WIPO should establish a process under which the cross-funding provided in prior years will be refunded in an appropriate manner.

As parties to this Agreement consider implementing its provisions, they should ensure they do not impose inappropriate barriers to trade. Restrictions on trade due to the inappropriate use of geographical indications are already proliferating in ways that negatively impact the trade opportunities of U.S. companies and the workers they employ. We are very concerned that parties to this Agreement will implement it in a manner inconsistent with existing international trade obligations, including under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Our faith in WIPO as an institution has been seriously undermined by WIPO's departure from longstanding practice when it allowed a limited group of WIPO members to amend the Lisbon Agreement, without full participation of all WIPO members in a consensus fashion, and in a way that harms market access and the intellectual property rights of stakeholders from the United

States and other WIPO member countries. We urge you to take appropriate steps to rectify the funding situation and to implement the Agreement in a fair and balanced way that adequately protects the interests of trademark owners and users of generic names. We will continue to monitor closely these developments and other areas of WIPO's work to ensure that WIPO effectively functions as a global forum for the protection of intellectual property rights.

Sincerely,

ORRIN HATCH
Chairman
Committee on Finance
United States Senate

CHARLES GRASSLEY
Chairman
Committee on the Judiciary
United States Senate

PAUL RYAN
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Committee on Ways and Means
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