AIPLA
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

August 9, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

via Email: rule-comments@sec.gov

RE: AIPLA Comments to Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 FR 23915, dated April 22, 2016 – File Number S7-06-16

Dear Secretary Fields:

The American Intellectual Property Law Association ("AIPLA") welcomes this opportunity to comment on the above-referenced Concept Release by the Securities and Exchange Commission on the Business and Financial Disclosure Required by Regulation S-K (the "Concept Release").

The American Intellectual Property Law Association is a national bar association of approximately 14,000 members who are primarily lawyers engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective global laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

AIPLA's comments focus on those portions of the Concept Release that relate to Intellectual Property. In addition, because SEC matters are not ordinarily the domain of AIPLA, we only offer comments with respect to those questions relating to Intellectual Property to which we have the strongest and clearest reaction. In particular, AIPLA offers several comments directed to those questions of the Concept Release on the concept of materiality as it is applied to disclosures relating to Intellectual Property, as well as specific provisions addressed in the document such as, for example, 17 C.F.R. § 229 Item 101(c). As such, AIPLA respectfully

submits that the Commission considers the following comments when contemplating any changes to the Financial and Business Disclosure Requirements by Regulation S-K.

IV. Information for Investment and Voting Decisions

A. Core Company Business Information

2. Narrative Description of Business (Item 101(c))

Question 39. *In some circumstances, disclosure is required under Item 101(c)(1) if material. The item specifies that, to the extent material to an understanding of the registrant's business taken as a whole, the description of each segment shall include the information in (c)(1)(i) through (x) and that matters in (c)(1)(xi) through (xiii) shall be discussed for the registrant's business in general; where material, the segments to which these matters are significant shall be identified. Additionally, some sub-items of Item 101(c)(1) require disclosure if material, such as (c)(1)(ii) and (c)(1)(ix),* [200] *while others do not.* [201] *Should we require disclosure of all line items in Item 101(c) in all circumstances, regardless of materiality? Why or why not? Alternatively, would a principles-based approach to disclosure about a registrant's business and operations allow flexibility to disclose information that is important to investors? If so, how should such a disclosure requirement be structured? What factors should we consider in developing such a requirement?*

> **Answer:** Referring to Item 101(c)(iv) only, a materiality standard should be applied. A materiality standard provides a sufficiently flexible threshold that ensures disclosure only when meaningful to investors. Because businesses may possess large volumes of intellectual property of varying value, disclosure of non-material information could be unduly burdensome and unhelpful to investors.

3. Technology and Intellectual Property Rights (Item 101(c)(1)(iv))

Question 42. *Should we retain the current scope of Item 101(c)(1)(iv), which requires disclosure of a registrant's patents, trademarks, licenses, franchises and concessions? Should we expand the rule to include other types of intellectual property, such as copyrights? Should we remove the individual categories and instead require disclosure of "intellectual property"? If so, should we define that term and what should it encompass?*

Answer. The current scope of Item (c)(1)(iv) should be retained. The level of detail to be disclosed must balance the interests of the investor's need to know, the company's need for confidentiality, the burden on the company, and should not require disclosures that would impede or discourage innovation or impact intellectual property rights. Please consider the following factors:

a. The need of a Company to maintain confidentiality or secrecy of, for example, unpublished patent applications and trade secrets, which depend on confidentiality to preserve the value of such assets.
b. The burden placed on a Company to identify, describe, and maintain an inventory of intellectual property, especially those below the materiality threshold. The burden of tracking and reporting on intellectual property can be immense. (Copyrights are ubiquitous as they arise in any work of authorship once fixed in a tangible medium – no government registration or grant is required. Trade secrets arise out of maintaining their secrecy – they are not registered with governments and they would be lost by way of public disclosure. Copyrights and trade secrets may be created on a daily basis and are not consistently tracked. Moreover, patented inventions may or may not be used in the Company's products or may be used in products that are not material to the Company's core business. Companies with large product and patent portfolios do not necessarily track such use, and there is no simple standard for valuation of patents. Tracking the foregoing would impose a high burden that would distract resources away from innovation. Most license agreements are confidential according to their terms, imposing an additional complexity.)

Question 43. *What, if any, additional information about a registrant's reliance on or use of technology and related intellectual property rights should we require and why? Should we revise Item 101(c)(1)(iv) to require more detailed intellectual property disclosure, similar to the disclosure currently provided by some biotechnology and pharmaceutical registrants? If so, should we require such detailed disclosures for all or only some of a registrant's intellectual property, such as those that are material to the business?*

Answer. We do not believe that intellectual property disclosure requirements should be revised. Revising Item 101(c)(1)(iv) to require more detailed intellectual property disclosure risks that disclosures become so voluminous that they overwhelm investors and make it more difficult to identify information that is material. Disclosure of information that is not useful to investors may be counterproductive. Intellectual

property serves to promote innovation and imposing a high burden would distract resources away from innovation. A materiality standard provides a more meaningful threshold than prescribing the level of detail in the intellectual property to be disclosed.

Question 44. *For registrants with large intellectual property portfolios, does aggregate disclosure of the total number of patents, trademarks and copyrights and a range of expiration dates provide investors with sufficient information? If not, what additional information do investors need about a company's portfolio of intellectual property? Would tabular disclosure or an alternate format or presentation of a registrant's intellectual property portfolio make the information more useful to investors? What would be the benefits and challenges of requiring disclosure of this information in this format?*

Answer. Because the value of intellectual property varies considerably from item to item, aggregate disclosure may be enough to provide sufficient information. Additional information should only be disclosed if material. A materiality standard provides a meaningful threshold. There is no need to prescribe the format of the intellectual property disclosure - large tabular disclosures would not necessarily provide helpful information. Patents and trademark registrations can often be found using tools commonly found on the internet.

Question 45. *Should we limit these disclosure requirements to registrants in particular industries? If so, which industries should we specify and why? Is disclosure about a registrant's intellectual property most useful in the context of the description of business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management?*

Answer. Disclosure requirements should not be differentiated by industry. Rather, disclosure requirements should apply to all, and disclosures related to intellectual property should only be required to the extent material to a business. Regardless of industry, if the disclosure requirements are material to a company's core business, the company should be required to comply. The usefulness of disclosure cannot be overgeneralized and will vary widely.

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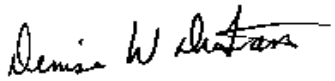
AIPLA appreciates the opportunity to provide these comments in response to the Concept Release. AIPLA looks forward to further dialogue with the Commission with respect to the disclosure of relevant intellectual property. Required disclosures should properly balance the

interests of investors in having access to useful information against the burden of such disclosure as well as the need for confidentiality that inherently preserves the value in such business assets.

Sincerely,



Denise W. DeFranco
President
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