

AIPLA

American Intellectual Property Law Association

September 8, 2020

The Honorable Jerry Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
United States House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

The Honorable Hank C. Johnson
Chairman
Committee on the Judiciary
Subcommittee on Courts, Intellectual
Property, and the Internet
United States House of Representatives
6310 O'Neill House Office Building
Washington, DC 20024

The Honorable Martha Roby
Ranking Member
Committee on the Judiciary
Subcommittee on Courts, Intellectual
Property, and the Internet
United States House of Representatives
504 Cannon House Office Building
Washington, DC 20515-0102

Re: AIPLA Comments on H.R. 6196, the Trademark Modernization Act

Dear Chairman Nadler and Ranking Member Jordan; Chairman Johnson and Ranking Member Roby:

AIPLA appreciates the Committee's continued work towards reducing the number of spurious trademark-related filings and deadwood registrations in the U.S. Patent and Trademark Office through H.R. 6196, the Trademark Modernization Act of 2020 ("TMA"). AIPLA supports the Trademark Modernization Act, legislation amending the federal Lanham Act to authorize the administrative invalidation by the Director of the U.S. Patent and Trademark Office of registrations covering marks that either have never been used in commerce, or are not used in commerce by the relevant date under the statute for obtaining a registration. AIPLA particularly appreciates the TMA's recognition of the presumption of irreparable harm upon findings that plaintiffs have prevailed on the merits of their claims or are likely to do so.

Founded in 1897, the American Intellectual Property Law Association is a national bar association of approximately 8,500 members who are 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 laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

AIPLA is appreciative of the Committee's responsiveness to comments by AIPLA and other stakeholders on earlier versions of the legislation. For example, the legislation does not contemplate a return to the *Medinol* standard of liability, pursuant to which applications and

registrations could be invalidated on a class-wide basis if their owners knew or should have known an underlying representation of use in commerce was inaccurate.

AIPLA has a keen interest to ensure that the new procedures being contemplated by the legislation are implemented in as balanced and effective manner as possible. Therefore, we welcome continued guidance from and discussions with the Committee and others as the legislation moves forward, through legislative history, or by the rulemaking necessary to implement the bill's provisions.

AIPLA appreciates the Committee's interest in this important topic and the staff's significant work on this legislation. We urge the Committee to move forward with the legislation at this time and look forward to continuing to work with the Committee as the process moves forward.

Thank you for your consideration of these views.

Sincerely,

A handwritten signature in blue ink that reads "Barbara A. Fiocco". The signature is written in a cursive, flowing style.

Barbara A. Fiocco
President
American Intellectual Property Law Association