



March 24, 2010

Office of Management and Budget
Executive Office of the President
ATTN: Victoria A. Espinel
United States Intellectual Property
Enforcement Coordinator
intellectualproperty@omb.eop.gov

Re: Federal Register Notice: 75 FR 8137: Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator for Public Comments Regarding the Joint Strategic Plan

Dear Ms. Espinal:

The Aerospace Industries Association (AIA) appreciates the opportunity to provide comments and recommendations on "Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator (IPEC) for Public Comments Regarding the Joint Strategic Plan," published in the *Federal Register* on February 23, 2010 (75 F.R. 8137). The request for written submissions from the public is to seek comments and recommendations on the costs to the U.S. economy resulting from intellectual property violations, and the threats to public health and safety created by infringement. The IPEC is also requesting detailed recommendations from the public regarding the objectives and content of the Joint Strategic Plan and other specific recommendations for improving the Government's intellectual property enforcement efforts.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110-403 (Oct. 13, 2008) ("the PRO IP Act" or "the Act") created within the Executive Office of the President, the position of the Intellectual Property Enforcement Coordinator (IPEC). Under the PRO IP Act, the IPEC is required to chair an interagency intellectual property enforcement advisory committee in order to develop an Administration strategy for enforcement against intellectual property infringement: The Joint Strategic Plan. Comments submitted under the notice in the Federal Register will be considered in the development of The Joint Strategic Plan.

AIA's Interest

AIA just celebrated its 90th Anniversary and is the predominant association representing the nation's leading manufacturers and suppliers of civil, military and business aircraft, helicopters, unmanned aircraft systems, space systems, aircraft engines, missiles, material and related components, equipment, services and information technology. We are proud to advocate on behalf of an industry that is responsible for providing over 641,000 jobs and accounts for approximately \$214 billion in revenue. Our member companies' exports totaled \$85 billion last year, fueling a positive trade balance of \$58 billion – the highest of any U.S. manufacturing sector.

Comments regarding Part I Analysis of Threat

Under Part I, the IPEC seeks written submissions identifying threats to public health and safety posed by intellectual property infringement. AIA suggests that the Office consider some of the recommendations in the U.S. Department of Commerce Bureau of Industry and Security report "Defense Industrial Base Assessment: Counterfeit Electronics."¹ The Assessment was undertaken to provide statistics on the extent of infiltration of counterfeits into U.S. defense and industrial supply chains, to provide an understanding of industry and government practices that contribute to the problem, and to identify best practices and recommendations for handling and preventing counterfeit electronics.

The assessment by the Office of Technology Evaluation (OTE) focused on discrete electronic components, microcircuits, and circuit board products – key elements of electronic systems that are used by AIA member companies and support national security, industrial, and commercial missions and operations. A total of 387 companies and organizations, representing five segments of the supply chain, participated in the study covering the 2005 to 2008 reporting period. The supply chain segments surveyed were original component manufacturers, distributors and brokers, circuit board assemblers, prime contractors and subcontractors, and Department of Defense agencies.

Although the report covers a snapshot in time (the 2005 to 2008 reporting period), the OTE proposed recommendations, based on survey responses, which the U.S. government should institute to minimize the circulation of counterfeit electronics and reduce intellectual property infringement:

- establish a centralized federal reporting mechanism for collecting information on suspected/confirmed counterfeit parts for use by industry and all federal agencies;
- issue clear, unambiguous legal guidance to industry and U.S. federal agencies with respect to civil and criminal liabilities, reporting and handling requirements, and points of contact in the Federal Bureau of Investigation regarding suspected/confirmed counterfeit parts;

¹ Available at <http://www.bis.doc.gov/defenseindustrialbaseprograms/osies/defmarketresearchrpts/default.htm> .

- establish federal guidance for the destruction, recycling, and/or disposal of electronic systems and parts sold and consumed in the United States;
- establish a dialogue with law enforcement agencies on the potential need to increase prosecution of counterfeiters and those entities knowingly distributing counterfeit electronic parts; and
- develop international agreements covering information sharing, supply chain integrity, border inspection of electronic parts shipped to and from their countries, related law enforcement cooperation, and standards for inspecting suspected/confirmed counterfeits;

Supplemental Comment Topics

Supplemental Comment #3 (75 FR 8138). Identify specific existing processes involving cooperation between stakeholders and the U.S. Government (or between stakeholders and other governments) that have been particularly effective at curtailing or preventing infringement.

In December 2008, AIA formed a Counterfeit Parts Integrated Project Team (IPT) consisting of AIA members, original manufacturers, other relevant industry associations, and independent distributors. U.S. government agencies participating in the meetings include the Department of Defense, National Aeronautics and Space Administration, the Department of Justice including the Federal Bureau of Investigation, National Institute of Standards and Technologies, and Department of Homeland Security. By bringing together both stakeholders (aerospace, space and defense companies) and the relevant U.S. Government agencies, the IPT has been able to educate members and the US Government about the source of counterfeit product, how to reduce and mitigate counterfeit product from entering the supply chain, and working with law enforcement agencies. The IPT meets several times a year to discuss updates on activities by both industry and government and is in the process of developing recommendations for its members.

Supplemental Comment # 6 (75 FR 8138). Suggest new methods for rights holders and importers to provide information to U.S. Customs and Border Protection (CBP) on distribution and supply chains. Such information could enable CBP to increase the effectiveness of its process for selecting ("targeting") imports for inspection by creating a segment of trusted imports, which would allow CBP to better focus its targeting on high risk imports and imports for which advance information is lacking.

Promote and encourage rights holders and importers to identify known violators, the origin by place or country of the counterfeit goods, their most commonly used or primary routes into the US including Ports of Entry and frequency of shipment, and provide this information to CBP for targeted enforcement action. Rights holders and importers can perform this activity by review of Customs import records using automated search software such as TradeIQ™ by Zepol to analyze Customs records. Also, make the Customs records more readily accessible for those rights holders or importers who would prefer to do independent searches without need of dedicated search software. Providing this type of specific information to CBP will

enable targeted enforcement, leverage existing CBP resources and maximize opportunities to interdict inbound shipments of counterfeit goods.

Supplemental Comment Topic #15 (75 FR 8138). Provide information on the various types of entities that are involved, directly or indirectly, in the distribution or dissemination of infringing products and a brief description of their various roles and responsibilities

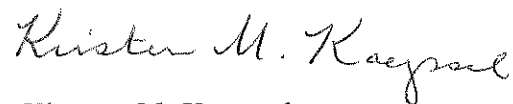
Counterfeit electronic components including chips, conductors, etc. are a widely recognized problem. The rapid evolution of electronics in the commercial market place results in rapid obsolescence of many components followed by dwindling availability and sources in the supply chain. Military and government requirements and programs face difficulties in procuring replacement components. These factors have enabled a counterfeit market with sources in third world countries, including countries such as China, wherein recycling, remarking and repackaging of used or old components is used to reintroduce the components into the supply chain in a counterfeit condition masquerading as new, or higher quality, or specialized components.

The Department of Commerce report cited earlier in the letter provides some background on this issue as well as the countries where the incidents have been occurring.

Conclusion

AIA, on behalf of its member companies, thanks you for the opportunity to provide these comments and welcomes an opportunity to discuss them further with you. If you have any questions or need any additional information, please contact me at 703-358-1044 or kirsten.koepsel@aia-aerospace.org .

Sincerely,



Kirsten M. Koepsel
Director, Legal Affairs & Tax