



**John Stanford Oral Public Hearing Statement Re: Investigation No. 332-596,
COVID-19 Diagnostics and Therapeutics, Supply, Demand, and TRIPS Agreement
Flexibilities**

Good afternoon and thank you for the opportunity to testify. As the Executive Director of Incubate, the leading organization representing the views of life science venture capitalists, I am here to highlight the critical role intellectual property plays in our decisions on how, when, and to whom we deploy capital, which is vital to the development of the next generation of medicines.

For investors, particularly those investing into companies with little actual assets, IP functions exactly as the founding fathers imagined when they enshrined it in the constitution. It safeguards the effort and innovation of entrepreneurs. In this case, that often includes highly educated scientists, and offers much needed value and stability to the investor.

When the World Trade Organization initially proposed waiving intellectual property rights amid the pandemic, Incubate, as well as our peer organizations in Europe, voiced our opposition. We believed then, as we believe now, that weakening IP will lead to less investment in the early-stage life science ecosystem, and therefore fewer new drugs. For this reason, we oppose any expansion of the TRIPS waiver.

As I am sure you are hearing during these testimonies, intellectual property ultimately was not the barrier it was made out to be during the initial TRIPS waiver debates. Long standing inequities, barriers to access to medicine in the developing world, manufacturing realities, and even vaccine hesitation proved to be insurmountable challenges which ultimately led to millions of doses a vaccine going unused. The initial TRIPS waiver, however, did send a clear signal that under certain conditions IP and the rule of law is not universally guaranteed.

I'd like to explain why that is so impactful to our community. As investors in the riskiest industry in the world we typically consider three aspects to investment. First, we consider the scientific likelihood of success, which is why so many VCs come from a medical background or have PhDs in discrete areas of biology virology and chemistry. Second, we consider the capital necessary today to advance the project. Third, we consider the ability to recoup that investment in order to redeploy the profits into future projects. Nine out of ten of our investments will fail – 90%. The tenth investment needs to be such an outstanding success as to have made all the other losses worthwhile. That is the reality of drug development.

Our opposition to weakening intellectual property, because that is exactly what this proposal seeks to do, is because it changes the calculus for that third element. By raising questions about whether long standing IP protections will be respected around the globe, we are increasing the risk associated with every single investment. Fundamentally, as you increase risk, you will increase the cost of capital, and it is possible to increase risk so much that capital is better deployed elsewhere – be it in other geographies or industries. To save time, I will not dwell on the unique success of the American life science ecosystem, but there must be a thorough discussion about the economic and national security interests related to keeping American IP protected.

There are, however, unintended consequences that we find particularly pernicious and merit discussion. Efforts to undermine IP are not new, and many familiar faces frequently call for the removal of intellectual property protections on products that can treat disease in the developing world. What concerns me most about such calls is that it creates a disincentive to invest and produce medicines that treat the diseases of the developing world.

In this case, a global pandemic forced all of us to face harsh realities about the state of global health care. Even in the US, the richest country in the world, inequity was painfully obvious. If we are willing to waive intellectual property associated with COVID treatments, why would we stop there? The advancement of mRNA is enabling possibilities around vaccines for malaria to HIV/AIDS, and more diseases that caused, and will only continue to cause, devastation around the world. Should private sector efforts in those areas be successful I would imagine there would be similar calls to waive IP. That is why these calls are in our view short sighted. Responsible investors will have a fiduciary requirement to resist efforts to develop innovations we are so close to having, due to the questionable protections around their investments.

These hearings are about seeking evidence, and I would like to offer Incubate's life sciences investment tracker to be added. The tracker was created to measure changes in medicine development following a significant change to US drug development policy last year, which included a fundamental change to the value of intellectual property protections. The evidence is both clear, immediate and unfortunate. Limiting the ability for these risky investments to reap rewards is leading to fewer investments and ultimately fewer medicines.

Despite whatever good intentions associated with the WTO's current proposal and others similar to it, the economic realities are simple. If we continue down the path of weakening intellectual property, we will disincentivize investment in areas that need more, not less investment. We would be trading the medicines of tomorrow without even solving the problem of today.

Thank you for the opportunity to testify and participate in this important discussion.

