

**Hearing on**

**“Economic Espionage and Trade Secret Theft:  
Are Our Laws Adequate for Today’s Threats?”**

**United States Senate Committee on the Judiciary  
Subcommittee on Crime and Terrorism**

**May 13, 2014**

**Written Statement of Douglas K. Norman  
Vice President and General Patent Counsel  
Eli Lilly and Company**

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Good afternoon Chairman Whitehouse, Ranking Member Graham, and Members of the Committee. My name is Doug Norman. I am the Vice President and General Patent Counsel of Eli Lilly and Company. Thank you for the opportunity to testify today on an issue of great importance not only to my company — and not only to my industry — but to all segments of the American economy.

I have held leadership positions in the intellectual property field for many years, including serving as President of the Intellectual Property Owners Association and leading various IP committees, including with the National Association of Manufacturers and the Pharmaceutical Research and Manufacturers of America. Eli Lilly and Company was founded and is headquartered in Indianapolis, Indiana. On May 10<sup>th</sup> – just last Saturday – Lilly celebrated its 138<sup>th</sup> birthday as a U.S. company. Our mission at Lilly is to discover and develop medicines that help people live longer, healthier and more active lives. Our major areas of innovation include therapies for cancer, diabetes and mental illnesses. To fulfill this vision, Lilly must rely upon intellectual property protection that includes patents, trademarks and trade secrets. Unfortunately, like too many of America’s leading innovator firms, Lilly has recently been the victim of trade secret theft.

Eli Lilly is a member of the Protect Trade Secrets Coalition, a cross-sector group of companies that are working to protect and defend trade secret property by supporting a harmonized, federal civil remedy for trade secret misappropriation.<sup>1</sup> We are pleased to support the Defend Trade Secrets Act, S. 2267, which would accomplish this objective, and thank Senators Coons and Hatch for introducing it.

We also are encouraged by your work, Chairman Whitehouse and Ranking Member Graham, to ensure law enforcement has the tools it needs to prosecute trade secret theft; and we appreciate the effort by Senator Flake to highlight the continued problem of trade secret theft that occurs abroad.

We also appreciate the leadership that Chairman Leahy and Ranking Member Grassley have demonstrated on trade secret protection. The bipartisan interest in improving trade secret law evidenced by this Committee’s work is important to our shared objective of improving the effectiveness and efficiency of remedies for trade secret misappropriation. Likewise, we are

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<sup>1</sup> The Protect Trade Secrets Coalition comprises Abbott Laboratories, Caterpillar, Corning Incorporated, Eli Lilly and Company, General Electric, Medtronic, Micron, Microsoft, Monsanto, NIKE, Philips, The Procter & Gamble Company, and United Technologies Corporation.

heartened by the discussions we have had with the leadership and Members of the House Judiciary Committee, and we look forward to working with them on this issue that is so important to all segments of our economy.

### **The Importance of Trade Secrets.**

Trade secrets are an essential form of intellectual property and part of the backbone of our information-based economy. Trade secrets are critical for the competitiveness of American companies in the 21st century. The information trade secret law protects is diverse, including manufacturing processes, industrial techniques, formulas, or customer lists. While companies rely on patent or copyright protection for some inventions and innovations, increasingly our competitiveness rests on protecting our trade secrets.

Whether you are a major pharmaceutical company like Eli Lilly or a start-up software company, your trade secrets are a big part of what sets you apart in the marketplace, and their protection is vitally important to maintaining a competitive edge and keeping workers on the job. Innovative companies have led the world in creating products that change how we work, play, communicate, create, and live our lives. Trade secret protection is a critical component of this innovation. By better protecting trade secrets, Congress can help create an environment conducive to fueling the next generation of new products and processes and the employment opportunities that flow from innovation.

Unfortunately, this form of information and know-how is particularly vulnerable to misappropriation given the rapid technological advances that have resulted in greater connectivity, as well as more globalized supply chains and more mobile employees.

### **The Vulnerability of Trade Secrets.**

Companies that are creating jobs in America are also increasingly the targets of sophisticated efforts to steal proprietary information, harming our global competitiveness. Broad industry surveys have found that 60 percent of companies surveyed from diverse industries had detected attempted or actual trade secret theft in a given year. Many such attacks go undetected. Most of the stolen trade secrets were located in the United States, but the major beneficiaries of the theft were foreign entities.

A theft can come through cyber-attack, voluntary or involuntary disclosure by an employee, or misappropriation by a joint venture partner. Often the theft is state-sponsored. Government sources have estimated that the loss of intellectual property for American companies from cyber espionage is \$200 billion to \$300 billion per year.

### **The Need to Modernize Trade Secret Laws.**

The tools thieves use in their attempts to steal American trade secrets are growing more sophisticated by the day. Our law must keep pace. The current legal tools available to prevent trade secret theft are antiquated and inconsistent with the robust protection available in other areas of intellectual property law. In the United States, these tools include a federal criminal

law, the Economic Espionage Act of 1996 (“EEA”), and an array of state laws that provide civil relief.

Under the EEA, it is a federal crime to misappropriate trade secrets for the benefit of a foreign government or for economic gain. The Act is an insufficient remedy, however, because it is solely a criminal statute. Criminal law to protect intellectual property has two important limitations. First, the FBI and the Department of Justice have limited resources and would never be in a position to bring charges in all cases of interstate trade secret theft. Second, criminal law punishes the defendant, but the process for compensating the victim is unwieldy, particularly when compared to relief available under civil law. For these reasons, federal statutes provide owners of other intellectual property — patents, copyrights, and trademarks — with the right to bring a civil action in federal court to recover damages and, in appropriate cases, enjoin further infringement.

State laws provide trade secret owners with a civil remedy the owner can bring against a party that has misappropriated a trade secret. State trade secret laws developed and made sense at a time when misappropriation was largely a local matter. It works well, for instance, when an employee of a local business steals a customer list and takes it to the business down the street. But for companies that operate across state lines and have their trade secrets threatened by competitors around the globe, the array of state laws is inefficient and inadequate for several reasons.

First, companies need compliance plans to protect their trade secrets. Under the array of state laws, a company that operates in more than one state bears significant additional and unnecessary costs to protect this critical form of intellectual property. The company must investigate the different requirements of different state laws, making it difficult to craft an effective and uniform national compliance plan. For small companies these costs can be prohibitive and take up precious resources that would otherwise be used to support innovation.

Second, trade secret theft today is increasingly likely to involve the movement of the secret across state lines. Such multi-jurisdictional movement makes discovery and service of process difficult. While federal courts permit subpoenas to be issued nationwide, state courts are often not as efficient at obtaining discovery in other states.

Third, trade secret cases require swift action by courts across state lines to preserve evidence and protect the trade secret from being divulged. This is particularly true when the theft is by an individual looking to flee the country, as is increasingly the case. State courts lack the ability of the federal system to serve defendants and prevent the disclosure of the trade secret or destruction of evidence. Once the trade secret has been divulged, or is made known to a competitor, trade secret protection may be lost forever and the harm from disclosure is often irreparable.

### **Support for the Defend Trade Secrets Act.**

We were pleased to announce our support for the Defend Trade Secrets Act along with more than 30 companies and associations from all segments of our economy. The breadth of

support for the legislation — from companies focused on diverse areas such as software, biotech, semiconductors, medical devices, agriculture, and apparel — demonstrates the importance of a harmonized, federal civil remedy. The companies that have already indicated their support for S. 2267 often disagree on other areas of intellectual property protection, but we are united in this effort.

We support the Defend Trade Secrets Act because it will create a uniform federal civil remedy for trade secret misappropriation and provide a mechanism to obtain expedited relief when there is a threat that our stolen secrets are about to be disclosed or the evidence destroyed.

The consistent, harmonized legal framework that S. 2267 establishes will provide a more efficient and effective legal structure to protect our property. It also puts trade secret protection in-line with the remedies available for owners of other forms of intellectual property. Further, by creating a uniform standard, the legislation will encourage companies to create one set of best practices to protect their trade secrets in every state.

We appreciate the leadership Senator Coons and Senator Hatch have shown with this legislation.

We also look forward to working with Chairman Whitehouse and Ranking Member Graham on ensuring law enforcement has the tools it needs to prosecute trade secret theft. Similarly, we look forward to working with Senator Flake on his initiative to fight theft that occurs overseas. While we want to be careful not to encourage other countries to pass laws targeting conduct that occurs purely in the United States, we agree that it is important to study ways in which we can address this form of theft effectively.

## **Conclusion.**

Americans have a long history of investing in innovation. American companies are competing globally and the know-how resulting from those investments is constantly under attack from sources both foreign and domestic. A national solution that provides consistent and predictable trade secret protection and enforcement is therefore essential to our global competitiveness. Now is the time for Congress to enact the same type of legal protections for trade secrets that other forms of intellectual property – including patents, trademarks and copyrights – have long enjoyed. The Defend Trade Secrets Act will establish the gold standard for national trade secret laws globally and serve as an important base for international harmonization efforts. We urge the Committee to consider this legislation and for all Senators to support it.