



January 28, 2026

**Comment of the Innovation Alliance  
On the Request for Comments Regarding the 2026 Special 301 Review  
Office of the United States Trade Representative**

Docket No. USTR-2025-0243

The Innovation Alliance appreciates the opportunity to submit these comments in response to the Request for Comments Regarding the 2026 Special 301 Review issued by the Office of the United States Trade Representative (“USTR”).<sup>1</sup> The annual Special 301 Report offers an important “opportunity to put a spotlight on foreign countries and the laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers, which, in turn, harm American workers whose livelihoods are tied to America’s innovation- and creativity-driven sectors.”<sup>2</sup> In light of a growing trend—even among U.S. allies—of deploying judicial and regulatory actions that weaken U.S. patent rights and threaten U.S. global technology leadership, **the Innovation Alliance encourages USTR to detail these developments in a dedicated new subsection to the 2026 Special 301 Report (within Section I.E), entitled “Improper Burdens and Limits on Patent Use.”**

The Innovation Alliance<sup>3</sup> is a coalition of research and development (R&D)-based technology companies representing innovators, patent owners, and stakeholders from a diverse range of industries that believes in the critical importance of maintaining a strong patent system that supports innovative enterprises of all sizes. The Innovation Alliance is committed to strengthening the patent system around the world to promote innovation, economic growth, and job creation here at home, and we support legislation, rules, and policies that help to achieve those goals. The Innovation Alliance applauds the Trump Administration for its commitment to protecting U.S. global leadership in technological innovation and its willingness to engage with our allies to protect U.S. intellectual property around the world.

The proposed subsection of the 2026 Special 301 Report would describe a series of developments emerging in China and Europe that, under the guise of transparency and efficiency, weaponize legal and regulatory processes to devalue patent rights and disadvantage U.S. innovators and patent holders. By weakening the enforcement of patent rights, these actions threaten American innovation leadership, economic competitiveness, and national security. As discussed in more detail below, three major trends are emerging that improperly and unfairly harm U.S. innovators:

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<sup>1</sup> Off. of the U.S. Trade Rep., *Request for Comments and Notice of a Public Hearing Regarding the 2026 Special 301 Review*, 90 Fed. Reg. 57519 (Dec. 11, 2025).

<sup>2</sup> Off. of the U.S. Trade Rep., *2025 Special 301 Report* at 5.

<sup>3</sup> <http://innovationalliance.net>.

- Court rulings—called anti-suit injunctions (ASIs) that bar U.S. companies from enforcing their patents anywhere else in the world.
- Judicial or administrative procedures that compel innovators to grant, without their consent, global licenses to patented technologies on terms set by the court or the government.
- Judicial or legislative efforts to restrict the availability of injunctions against patent infringement, the core remedy that allows patent holders to enforce their rights.

Each of these trends adversely affects U.S. innovators and patent holders and tilts the playing field in favor of foreign companies, many with substantial financial and political support from their home government or acting in concert with government officials.

The 2026 Special 301 Report offers an important opportunity for USTR and the Trump Administration to highlight those trading partners who leverage their legal and regulatory processes to weaken patent rights and disadvantage U.S. innovation, to the primary benefit of companies based in China and supported by the Chinese Communist Party.<sup>4</sup> Consistent with the Administration’s other pro-innovation actions<sup>5</sup>, a new subsection in the Special 301 Report highlighting Improper Burdens and Limits on Patent Use will allow the Administration to document and challenge those foreign acts, policies, and proposals that most directly undermine U.S. patent rights. Ensuring that American inventors can fully exercise their patents globally – whether by licensing on fair terms or by excluding infringers – is vital to U.S. technology leadership, economic competitiveness, and national security.

**I. Reliable Patent Protections—including for Standard Essential Patents (SEPs)—are Critical to U.S. Global Competitiveness and Technology Leadership**

At a time when the United States and China battle daily for technological superiority, U.S. innovators need certainty that their IP rights will be respected in the United States and around the world to incentivize risky investments in research and development (R&D) that lead to the commercialization of critical and emerging technologies. Preserving incentives for U.S. innovators to invest in R&D and contribute their inventions to global standards ensures U.S. technologies can compete for standards leadership. Weakening U.S. IP protections reduces R&D incentives, cripples U.S. innovators’ ability to compete in key technology areas and legitimizes efforts by China to devalue U.S. inventions to benefit its own domestic industries.

SEPs are patents necessary for implementing a particular technology standard, such as WiFi, 5G or 6G wireless cellular communications, Qi wireless charging, advanced audio or video compression technology, and countless other standards. Like all patents, SEPs incentivize and facilitate research, development, and commercialization of new technologies, and promote innovation and competition to

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<sup>4</sup> The China Priority Watch List section of USTR’s 2025 Special 301 Report identifies ongoing concerns that “Chinese courts appear increasingly interested in exercising jurisdiction in cases involving SEPs” and have issued ASIs in some of these cases.

<sup>5</sup> See the Appendix to this Comment for excerpts from key Administration actions and policy statements in support of strong U.S. patent rights.

develop the best technology, while allowing implementers<sup>6</sup> to make products. For example, standardization allows a 5G mobile phone designed in the United States, manufactured in Asia, and sold in Europe to send and receive data wirelessly over any 5G network worldwide.

Innovators around the world compete to have their patented innovations included in a standard, with engineers in the relevant field determining which technologies to include in the standard based on their technical merit. This means that the best technologies—developed by the companies making the most significant and meaningful investments in R&D—are adopted into the standard.

U.S. patent law and policy have long recognized that private parties—the patent owner and the implementer—should set the terms of patent licenses, including royalties, through market-driven, arms-length negotiations. SEP owners have an additional obligation: when they contribute their inventions to the development of a standard, they voluntarily agree to license their patents on “fair, reasonable, and nondiscriminatory” (FRAND) terms to facilitate the broad dissemination of the technology. FRAND licensing ensures the inventor of a patented technology can obtain licensing fees that fairly compensate them for the true value of their innovation in the free market, while also ensuring standardized technologies are accessible to implementers.

## **II. Foreign Courts Weaken U.S. Patent Rights by Setting Global Royalty Rates and Blocking Innovators from Further Enforcing Their Patent Rights**

Foreign courts have increasingly asserted jurisdiction to set global licensing terms for U.S. patents without the consent of the patent owner while also preventing patent holders – including U.S. companies – from validly exercising their patent rights, even in other countries. These tactics violate basic principles of due process and national sovereignty while undermining the foundation of patent rights themselves by depressing the value of U.S. patented technologies.

Courts in China and the UK, in particular, have issued rulings that set the license terms—including royalty rates—for a global patent portfolio without the patent owner’s consent either to the court’s jurisdiction or to enter into a license on those terms. Patent rights are territorial, meaning that U.S. courts have jurisdiction over U.S. patents, while UK courts have jurisdiction over UK patents. While it is appropriate for courts to set the terms of a global license if both parties first voluntarily agree to enter into that license, it is an improper limit on territorial patent rights to do so without the patent holder’s consent, regardless of whether the global portfolio contains SEPs, non-SEPs, or a mix.<sup>7</sup>

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<sup>6</sup> The term “implementer” is used as a shorthand to refer to a company that is using the patented technology by including patented technology in its product. The term “implementer” includes both companies that license the technology from the patent holder and those whose use may infringe on the patent.

<sup>7</sup> It is the established practice of U.S. courts to only set the terms of a global license if both parties consent. *Compare Microsoft v. Motorola*, No. 2:10-cv-1823, 2012 U.S. Dist. LEXIS 146517, at \*17 (W.D. Wash. Oct. 10, 2012) (“ . . . both Microsoft and Motorola agreed to determine the RAND royalty rate by bench trial.”); *HTC v. Ericsson*, No. 6:18-cv-243, 2019 U.S. Dist. LEXIS 170087, at \*16 (E.D. Tex. May 22, 2019) (“As an initial matter, the Court finds that it has subject matter jurisdiction to declare a FRAND rate. Both HTC and Ericsson have sought declarations of whether Ericsson’s offers were FRAND and, if not, a declaration of a FRAND rate.”) with *Interdigital v. ZTE*, No. 1:13-cv-9, 2014 U.S. Dist. LEXIS 72389, at \*10-11 (D. Del. May 28, 2014) (The parties “indicated their ‘willingness’ to accept a license but there was no sworn affidavit that they would sign a license.” The court therefore the court therefore declined to determine whether Interdigital offered a FRAND rate and what a FRAND rate would be, because “the only purpose of this would be to alter the current negotiating power between the parties.”); *Apple v.* (continued...)

Moreover, in addition to setting global licensing terms, Chinese and UK courts routinely issue ASIs<sup>8</sup> when requested by the implementer to prevent the patent owner from validly exercising its patent rights in the United States and other countries.

**China.** Chinese courts allow implementers to drag patent holders into court – without their consent – and seek an order granting licenses and setting global royalty rates for the patented technology.<sup>9</sup> In granting such requests, Chinese courts also routinely issue ASIs when requested by the implementer to prevent the patent holder from enforcing its rights anywhere else in the world, including in the United States.<sup>10</sup> This effectively ensures that the Chinese ruling becomes the de facto licensing rate for the global patent portfolio.

Unsurprisingly, Chinese courts set the license terms to favor Chinese companies over the patent holders. In a recent dispute between Nokia and Chinese mobile phone handset maker OPPO over Nokia’s 5G patents, the Chongqing Intermediate Court imposed a global royalty on Nokia’s patent portfolio, ordering the company to accept the equivalent of \$1.151 per handset for sales in developed markets and \$0.707 in China and other less-developed markets. Notably, Nokia had not consented to

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*Ericsson*, No. 15-cv-154, 2015 WL 1802467 (N.D. Cal. Apr. 20, 2015) (“ . . . there exists no legal basis upon which Apple may be compelled to take a license for Ericsson’s patents on a portfolio-wide basis, as much as Ericsson may be able to point to business realities that make such an outcome unlikely, imprudent or uneconomical on Apple’s part”).

<sup>8</sup> Although referred to as anti-suit injunctions by most courts, they are called “behavioral preservation measures” in China and “interim license declarations” in the UK. Regardless of the label, they are intended to prevent the patent owner from exercising its patent rights in other territories under the threat of fines or other consequences. To be clear, anti-suit injunctions and the like are not always a concern; they may be appropriate in certain circumstances such as when both parties agree to enter a global license on the terms set by the court. *E.g.*, *Microsoft v. Motorola*, 696 F.3d 872 (9th Cir. 2012); *Panasonic v. Xiaomi*, [2024] EWCA Civ 1143.

<sup>9</sup> See *Sharp Corp. v. OPPO Guangdong Mobile Telecomm. Co. Ltd.*, Zhi Min Xia Zhong No. 517 (Shenzhen Intermediate People’s Ct. 2020), *aff’d Sharp Corp. v. OPPO Guangdong Mobile Telecomm’n Co. Ltd.* (Supreme People’s Ct., Aug. 19, 2021) (holding that patent holder consent was not necessary for a court to exercise jurisdiction to set global FRAND licensing rates for standard essential patent portfolio); *Xiaomi Comm’n Co. Ltd. v. InterDigital, Inc.*, Zhi Min Chu No. 169 (Wuhan Intermediate People’s Ct., 2020) (issuing an ASI to prevent InterDigital from enforcing its SEPs in other jurisdictions while the Wuhan court set global terms for InterDigital’s SEP portfolio); *Samsung v. Ericsson*, Zhi Min Chu 743 (Wuhan Intermediate People’s Ct., 2020) (setting global licensing terms for Ericsson’s SEP portfolio and issuing an ASI to prevent Ericsson from asserting its patents or seeking relief—in the form of an “anti-anti-suit injunction,” or “AASI”—in other jurisdictions); *OPPO v. InterDigital, Inc.*, Yue 73 Min Chu No. 195 (Guangzhou Intermediate Ct. 2023), *aff’d Oppo v. InterDigital Corp.* (Supreme People’s Ct. Sept. 4, 2023) (confirming jurisdiction to determine global FRAND rates without the consent of the SEP holder); *OPPO v. Nokia*, 2021 Yu 01 Minchu No. 1232 (Chongqing Intermediate Ct. 2023) (setting global licensing terms for Nokia’s SEP portfolio without Nokia’s consent); *SUNMI v. Nokia* (Yunnan Kunming Intermediate People’s Court, 2025) (accepting SUNMI’s request to set global licensing terms for Nokia’s SEP portfolio); *Geely v. Nokia* (Hangzhou Intermediate People’s Court, 2025) (accepting Geely’s request to set global licensing terms for Nokia’s SEP portfolio). The Innovation Alliance cannot know the full scope of the problem because Chinese court cases are generally not made public by the government. For example, *Geely v. Nokia* was filed on July 22, 2025, but was only made known on January 15, 2026, through a filing that Nokia made in the UPC in its case there against Geely. See Michael Ma, *Geely Seeks Global FRAND Rate Determination Against Nokia in Hangzhou Court of China* (Jan. 25, 2026), <https://michael7924.substack.com/p/geely-seeks-global-frand-rate-determination>.

<sup>10</sup> See *Sharp v. OPPO*; *Xiaomi v. InterDigital*; *Samsung v. Ericsson*. There is no evidence that the implementer requested an ASI in *OPPO v. Interdigital*, *OPPO v. Nokia*, *SUNMI v. Nokia*, or *Geely v. Nokia*.

jurisdiction in China and indeed was actively enforcing its licensing agreements in other jurisdictions, including the UK, when the court granted OPPO a *de facto* compulsory license on these favorable terms.<sup>11</sup>

Earlier this year, the World Trade Organization (WTO) found that China's ASI practice in these cases violates its obligations under the TRIPS Agreement. Specifically, the WTO concluded that the court decisions "frustrate[] other Members' implementation of Article 28.1 to the extent it prevents SEP holders from exercising the exclusive rights bestowed upon them by those Members."<sup>12</sup> The WTO also found that improperly empowering courts to impose compulsory global patent licenses that the patent holders would not agree to on their own "effectively 'negate[s]' a patent owner's exercise of its 'right'" to license its patents on its own term in other countries.<sup>13</sup>

In January 2025, the European Union initiated a WTO dispute against China alleging that it violates TRIPS Articles 28.1 and 28.2 because its "courts can take decisions setting licensing conditions without the consent of both parties, notably the patent owner, for worldwide licences covering non-Chinese SEPs, which are binding on both parties and enforceable in China."<sup>14</sup> China's courts "pressure[] innovative European high-tech companies into lowering their rates on a worldwide basis, thus giving Chinese manufacturers cheaper access to those European technologies unfairly."<sup>15</sup> The Innovation Alliance agrees with the European Union and encourages the United States to support its complaint. China has not yet replied.

**United Kingdom.** Courts in the United Kingdom have adopted an approach like that of Chinese courts. In its 2020 decision in *Unwired Planet v. Huawei*, the UK Supreme Court held that British courts may set global patent license terms as a condition for granting a patent injunction in the UK, where the parties had both consented to jurisdiction.<sup>16</sup> Since *Unwired Planet*, however, UK courts have gone further, assuming authority to set the terms and conditions for global licenses to a patent holder's portfolio even in cases where the patent holder has not agreed either to the court's jurisdiction or to accept a court-determined license. UK courts then impose so-called "interim licenses"—temporary, court-imposed global licenses while proceedings on the merits of a licensing dispute are ongoing, even if the patent owner objects.<sup>17</sup> Even more troubling, the UK courts are willing to include within the scope of

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<sup>11</sup> See *OPPO v. Nokia*, 2021 Yu 01 Minchu No. 1232 (Chongqing Intermediate Ct. 2023).

<sup>12</sup> World Trade Org., Dispute Settlement No. DS611/ARB25 § 4.95 (July 21, 2025).

<sup>13</sup> *Id.* § 4.138.

<sup>14</sup> World Trade Org., Dispute Settlement No. DS632/1 at 1 (July 21, 2025) (Request for Consultations by the European Union).

<sup>15</sup> European Commission, EU challenges China at WTO on Royalties for EU high-tech sector (Jan 19, 2025), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_293](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_293).

<sup>16</sup> *Unwired Planet v. Huawei*, [2020] UKSC 37, ¶ 91 (Aug. 26, 2020).

<sup>17</sup> See, e.g., *Lenovo v. Ericsson*, [2025] EWCA Civ 182, ¶ 157 (holding that Ericsson acted in bad faith in breach of its ETSI FRAND commitment by continuing to assert its previously filed patent infringement actions in the U.S. (E.D. North Carolina and the USITC), Brazil, and Colombia instead of entering into the court-mandated interim license, and declaring Ericsson an unwilling licensor in a case where Ericsson was not asserting its patents, did not agree to enter into a global license on the court-determined terms, and disputed the court's jurisdiction); *Acer, Asus, and Hisense v. Nokia*, [2025] EWHC 3331 ¶¶ 420, 428-431, 445-449 (Pat. Dec. 18, 2025) (holding that Acer, Asus, and

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the interim licenses non-UK patents that are not SEPs and thus are not encumbered by the SEP holder's agreement to offer to license the patents on FRAND terms and conditions.<sup>18</sup>

Both the UK and Chinese approaches involve a single national court assuming control over a multi-jurisdictional patent dispute at the request of an implementer – who must otherwise negotiate a license from the patent holder in good faith – without the patent owner's consent to that national court's global jurisdiction. In both cases, national courts wield powerful remedies against patent owners. These include ASIs that prohibit patent enforcement in other countries with the threat of cumulative daily fines and interim license declarations that, if not “willingly” entered into, result in declarations that the SEP holder (who has not asserted its patents in the UK) is an “unwilling licensor” in breach of its F/RAND commitment to the standards development organization (e.g., ETSI, ITU-T).<sup>19</sup> These measures aim to block the patent holder from using its patents in other countries while forcing the patent holder to accept the court-imposed licensing terms.

USTR has previously expressed concern over China's use of ASIs to support their “attempts to assert jurisdiction over global SEP disputes.”<sup>20</sup> The same trade and IP concerns apply to the UK as with China: court-ordered arrangements that apply globally undermine privately negotiated patent licensing and favor implementers who can seek court-ordered licenses in the UK or China rather than face the threat of injunction against the unlicensed use of the patent.

Moreover, the UK is also doubling down on this approach. The UK Intellectual Property Office (IPO) is now considering establishing a new “Rate Determination Track (RDT),” a tribunal within the UK Intellectual Property Enterprise Court (IPEC) dedicated solely to SEP royalty rates determinations.<sup>21</sup> The RDT tribunal “would provide a binding rate determination on request of either the licensor or licensee”<sup>22</sup>

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Hisense were entitled to an interim license from Nokia on the terms set by the UK court, and finding “Nokia in breach of their ITU-T Commitment”); *Warner Bros. v. Nokia*, [2025] EWHC 2888 (Pat. Nov. 5, 2025) (granting Warner Bros an *ex parte* global anti-anti-suit injunction to prevent Nokia from seeking an order from any other court that would prevent the UK court from setting the global license terms to Nokia's patent portfolio).

<sup>18</sup> *Acer, Asus, and Hisense v. Nokia*, [2025] EWHC 3331 ¶¶ 458-461 (including both encoding (non-essential) and decoding (essential) patents within the scope of the interim license); see *Warner Bros. v. Nokia*, [2025] EWHC 2888 ¶ 14 (granting an AASI to preserve its ability to issue an interim license that would cover both encoding (non-essential) and decoding (essential) patents).

<sup>19</sup> Although the UK judges have insisted that their interim license “declarations” have no extraterritorial effect because the SEP holder is not forced into the license, the resulting declarations for not entering into the interim license (declarations that the SEP holder breached its commitment to the standards development organization and is an unwilling licensor) can result in more severe consequences than the daily file issued by Chinese courts. In *Lenovo v. Ericsson*, for example, Lenovo filed the UK court's declarations in Ericsson's patent enforcement actions in E.D. North Carolina, the U.S. International Trade Commission, Brazil, and Colombia to argue that those courts should thus find against Ericsson. Lenovo also filed the UK court's declarations with ETSI to ask that ETSI institute disciplinary actions against Lenovo. The parties settled a few days later so the full impact of the UK court's declarations are yet unknown.

<sup>20</sup> See U.S. Trade Rep., *2024 Special 301 Report* at 49.

<sup>21</sup> U.K. Intellectual Prop. Off., *Consultation on Standard Essential Patents* ¶¶ 56, 61–71. (July 2025), <https://www.gov.uk/government/consultations/consultation-on-standard-essential-patents-seps/consultation-on-standard-essential-patents>.

<sup>22</sup> *Id.* ¶ 67.

with fewer procedural safeguards than a traditional court. Specifically, the proposal is that the RDT use “pre-litigation protocols, simplified procedures, specialists, and streamlined case management” to “focus on the narrow issue of rate setting.”<sup>23</sup> By not allowing for sufficient evidence of the market value of the SEP holder’s global portfolio, such as by introducing and unpacking comparable licenses, the RDT favors implementers who prefer a quick, court-ordered license over innovators who spent many years and many billions of dollars investing in R&D and technical standards development to bring the world’s most important technologies to market.

Technology implementers that sell products and services that use U.S. patents—especially those incorporated into technology standards—leverage these foreign court decisions to wield excessive and unfair power over U.S. innovators. Ordinarily, patent holders and implementers negotiate patent licensing agreements privately. Good faith contract negotiations between parties promote cooperation, ensure fair compensation for innovators, and grant implementers access to patented technologies on FRAND terms. The China and UK legal regimes, however, shortcut the negotiation process by dragging U.S. patent holders into overseas courts, which order them to grant licenses on non-market terms and enjoined from enforcing their IP anywhere else in the world. Rather than promote the commercialization of innovative technologies, these cases suppress licensing royalties, reducing the ability of U.S. innovators to invest in cutting-edge R&D used by foreign implementers.

These developments unfairly disadvantage U.S. innovation. The possibility of obtaining an injunction to stop infringement of a patent is the fundamental remedy of the patent system. U.S. innovators expect that when they obtain a patent, others cannot “make[], use[], offer[] to sell, or sell[] within the United States, or import[] into the United States” their invention without a license.<sup>24</sup> Allowing courts to dictate licensing terms without the consent of the patent owner erodes the very incentives for innovators to invest in risky R&D in the first place.

### III. Foreign Regulatory Proposals Devalue U.S. Patents and Threaten U.S. Leadership in Global Technology Standards

Foreign courts are not the only threat to U.S. innovation leadership. The European Union and the United Kingdom have also initiated regulatory proposals over the past several years to systematically devalue patents, particularly in standardized technology sectors where U.S. companies are innovation leaders. Several initiatives in foreign jurisdictions aim to tilt the balance overwhelmingly in favor of patent implementers (technology users) at the expense of patent holders (innovators).

**European Union Proposed SEP Regulation.** In April 2023, the European Commission unveiled a draft Regulation on Standard Essential Patents that would have imposed government-regulated aggregate royalty caps on SEPs and created a separate proceeding, outside of court, to adjudicate SEP disputes.<sup>25</sup> The proposal would also have created a new bureaucracy in the EU Intellectual Property Office (EUIPO) to oversee SEP licensing, forcing patent holders to comply with burdensome procedures,

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<sup>23</sup> *Id.* ¶ 63.

<sup>24</sup> 35 U.S.C. § 271(a) (defining patent infringement under U.S. law).

<sup>25</sup> European Comm’n, *Proposal for a Regulation of the European Parliament and of the Council on Standard Essential Patents and Amending Regulation (EU) 2017/01*, COM(2023)(232), [https://single-market-economy.ec.europa.eu/document/download/b7501cc3-febe-40ee-b4a0-6cd5a63a860c\\_en?filename=COM\\_2023\\_232\\_1\\_EN\\_ACT\\_part1\\_v13.pdf](https://single-market-economy.ec.europa.eu/document/download/b7501cc3-febe-40ee-b4a0-6cd5a63a860c_en?filename=COM_2023_232_1_EN_ACT_part1_v13.pdf).

including registration of SEPs and “essentiality” checks, before they could enforce their patents in court. Importantly, the proposed regulation required no similar disclosures from implementers.

Ultimately, in February 2025 the European Commission withdrew the SEP Regulation proposal.<sup>26</sup> However, the European Parliament has challenged the withdrawal and may push to resurrect some form of SEP legislation.<sup>27</sup>

Although the proposed SEP Regulation has been withdrawn, the EU Parliament’s commitment to future SEP regulations continues to risk devaluing U.S. innovation. Any future EU SEP initiative must not place asymmetric burdens on SEP licensors or undermine the global norm of good-faith, private sector-driven licensing. Instead, transparency and efficiency measures must be balanced and protect patent-holder rights. The EU Commission’s approach, had it proceeded, would have legitimized a government rate-setting mechanism for SEPs – exactly the kind of “government-imposed conditions or incentives for technology transfer” that USTR has called “unfair and harmful.”<sup>28</sup>

**UK IPO’s SEP Consultation.** Following the EU SEP Regulation, in July 2025, the UK Intellectual Property Office launched a “Consultation on Standard Essential Patents” proposing the creation of a specialized “Rate Determination Track” in the courts to provide fast, low-cost binding FRAND rate decisions at the request of either the prospective licensee (implementer) or licensor (patent owner). The proposal envisions a separate process at the UK’s IP Enterprise Court through which judges set “benchmark” royalty rates for SEP portfolios focused narrowly on pricing issues, without conducting full trials. This approach reduces due process protections for patent holders by eliminating opportunities to present evidence that bears on the royalty rates and other licensing terms. Moreover, the Consultation itself makes clear that the goal of the proposal is to reduce costs for *implementers* (licensees) who, due to a “lack of pricing transparency . . . can overpay for licences.”<sup>29</sup>

The Consultation also proposes a public database of standard-related patents that identifies which patent holders own particular SEPs. However, without safeguards, courts and private parties could misuse such a database to improperly value technologies. SEP databases allow the court to emphasize the number of patents a particular patent holder owns that are considered essential to a standard rather than the technical importance of individual patents and related technologies. Determining licensing rates based on “patent counts” artificially suppresses royalties because they reward innovators who hold the *most* patents rather than innovators who hold the *most significant* patents within a particular standard.

The Innovation Alliance urges USTR to work with the UK and other governments to avoid measures that frame injunctive relief or market-negotiated royalties as inherently “excessive” or abusive. Rather than restrict or weaken patent rights, U.S. trading partners should adopt policies that promote private sector-led, market driven licensing negotiation, rather than government-imposed royalties that

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<sup>26</sup> European Comm’n, *European Commission Withdraws Proposals for Standard Essential Patents Regulation*, Feb. 25, 2025, <https://ec.europa.eu/newsroom/eisma/items/871191/en>.

<sup>27</sup> See Marion Walsmann, European Parliament, *Legislative Train 12.2025: Standard Essential Patents (SEP) Regulation – Q2 2023*, Dec. 14, 2025 (noting that as of November 2025, the European Parliament has approved maintaining its challenge to the Commission’s withdrawal in the EU Court of Justice).

<sup>28</sup> Off. of the U.S. Trade Rep., *2025 Special 301 Report* at 25–26, 45.

<sup>29</sup> UK Intellectual Prop. Off., *Consultation on Standard Essential Patents*, CP 1357, July 15, 2025, ¶ 36; see also *id.* ¶¶ 34, 41–43.

distort the value of global technologies and reduce the potential return on investment for cutting-edge R&D. Moreover, disputes over patent licenses require fair judicial and administrative proceedings that respect due process rather than tilting the playing field in favor of implementers.

***EU and Germany License Negotiation Groups.*** Another worrying development is the emergence of “Licensing Negotiation Groups” (LNGs) in the EU and Germany. These coalitions of implementer companies band together as a bloc to negotiate blanket licenses with patent owners. In July 2025, the European Commission issued an informal guidance letter approving the creation of an automotive industry LNG for SEPs. The German government has also signaled approval of LNGs: the German Competition Authority (Bundeskartellamt) reportedly issued “comfort letters” to groups of carmakers allowing joint license negotiations for patents related to wireless connectivity.

These LNGs raise serious competition concerns. Dozens of major manufacturers acting in concert to lock in prices raise the risk of “holdout” — implementers refusing to license patents until the patent holder accepts favorable terms. Under U.S. law, these types of agreements among horizontal competitors—in this case, implementers of patented technologies—are generally considered illegal price fixing, a *per se* violation of the Sherman Antitrust Act.<sup>30</sup> While some coordination may benefit implementers like small and medium-sized enterprises that lack market power, even a large patent holder cannot fairly compete with a bloc of implementers unified in demanding below-market royalty rates. Allowing these buyer cartels to depress patent royalties further erodes incentives for U.S. innovators to invest in risky R&D and participate in global markets for cutting-edge technology.

#### **IV. Foreign Legislation to Limit Injunctive Relief for Patent Infringement Threatens to Prevent U.S. Innovators from Enforcing Their Patents**

The ability to exclude others from making, using, selling, or importing a patented invention without permission is the core of the property right conferred by a patent. An injunction issued by a court is the primary means for patent holders to prevent unlicensed use of their patented technologies. The threat of an injunction ensures implementers will negotiate patent licenses rather than simply infringe with impunity until a court orders them to pay damages.<sup>31</sup> As the UK Supreme Court has recognized, without injunctions, “implementers . . . would have an incentive to continue infringing until, patent by patent, and country by country, they were compelled to pay royalties. It would not make economic sense for them to enter voluntarily into FRAND licenses.”<sup>32</sup> Indeed, injunctions are so central to patent rights that Article 44 of the TRIPS Agreement requires all WTO members to ensure their courts have the authority to order injunctions to prevent patent infringements.<sup>33</sup>

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<sup>30</sup> See 15 U.S.C. § 1; *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 219–20 (1940).

<sup>31</sup> World Trade Org., Dispute Settlement No. DS611/ARB25 § 4.158 (July 21, 2025) (“Accordingly, we consider that the availability of ASIs to SEP implementers under the ASI policy alters the negotiating position of SEP holders in a fundamental way. It removes the main incentive for SEP implementers to negotiate with a SEP holder a licensing contract on FRAND terms. This is confirmed by the Panel’s factual finding that SEP implementers are incentivised to enter licensing contracts to avoid the ‘risk [of] infringing upon patent owners’ rights and the attendant legal consequences of doing so.’”)

<sup>32</sup> *Unwired Planet v. Huawei*, [2020] UKSC 37 ¶ 167.

<sup>33</sup> See World Trade Org., Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 44 (requiring member states to permit injunctive relief for patent infringement, subject to narrow exception for cases where the (continued...))

However, several foreign governments, particularly in Europe, are considering or implementing policies to deliberately weaken the availability of injunctions for patent holders based on the erroneous argument that the availability of injunctions allow patent holders to “hold up” implementers, leading to excessive royalties. These include moves to amend enforcement laws or issue guidance that disfavors granting injunctions in patent cases.

**EU IP Rights Enforcement Directive.** The European Commission has been examining its Intellectual Property Rights Enforcement Directive (IPRED) with an eye toward whether injunctions in patent cases should be harder to get, particularly for SEPs. Enacted in 2004, IPRED establishes baseline remedies (like injunctions and damages) for IP violations across the EU. In recent workstreams, the Commission has studied whether to issue guidance or even propose amendments to discourage courts from granting injunctions though the so-called “proportionality” principle. This approach attempts to address cases, as in Germany, where courts regularly issue injunctions against infringers that are not willing to license the technology.

**UK IPO Consultation.** While the UK’s 2025 SEP Consultation discussed above does not include specific proposals on injunctions, the questions asked of stakeholders clearly undermine the legitimacy of injunctive relief for infringement of SEPs, which emboldens jurisdictions like China to weaken injunctions and devalue U.S. technologies.

Although the UK Supreme Court has repeatedly affirmed the importance of injunctive relief as a core remedy for infringement of patents<sup>34</sup>, including SEPs, the Consultation questions whether injunctions are appropriate in SEP cases. Suggesting restrictions on access to injunctions not only undermines the ability of innovators to enforce their rights in the UK, but it also sends a troubling signal to other jurisdictions—including China—that weakening patent enforcement is acceptable. U.S. and European innovators rely on strong and predictable enforcement mechanisms to obtain a fair return on their patented inventions, both in their home countries and abroad—.

Ensuring full access to all remedies, including injunctions, across jurisdictions is essential to safeguarding the value of Western innovation and maintaining global leadership in key technology standards.

Other countries have also proposed weakening the ability of patent holders to obtain injunctions like the EU and UK proposals. For example, in December 2025, the China IP Research Society (a government-affiliated think tank) published a set of recommendations<sup>35</sup> that make patent injunctions in

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infringer did not have reasonable grounds to know they were “dealing in such subject matter would entail the infringement of an intellectual property right”).

<sup>34</sup> See *Unwired Planet v. Huawei*, [2020] UKSC 37 ¶ 3 (“In English law, once a patent owner has established that a patent is valid and has been infringed, it is prima facie entitled to prevent further infringement of its property rights by injunction.”).

<sup>35</sup> China Intellectual Property Society, The China Intellectual Property Research Association released the report “Empirical Research on Patent Prohibition Rules in China’s Judicial Practice and Suggestions for Improving the System” (Dec. 24, 2025), <http://www.cnips.org.cn/a19822.html> (The author and title in this citation has been roughly translated into English from the original Chinese).

civil litigation more difficult to obtain across the board by “balancing” patent protection with industrial innovation and development.

Each of these measures risk encouraging implementers to simply use patented technologies without a license, knowing that courts will hesitate to enjoin their behavior. For U.S. companies – who often must litigate abroad to stop IP theft or infringement – this trend is alarming. If foreign courts systematically deny injunctions, even for egregious infringers, U.S. patent holders could have no effective remedy against theft of their patents in those markets, undermining the value of their patents and threatening global U.S. technology leadership.

These developments illustrate that the assault on patent rights is global. USTR should reiterate to our trading partners that injunctions are critical to protecting patent rights.<sup>36</sup> The ability of innovators to stop unlicensed use of their inventions is fundamental to the patent system.<sup>37</sup> Weakening the ability to obtain court-ordered relief from infringement diminishes the willingness of implementers to negotiate fair licenses, reducing the return on investment in leading-edge technologies for patent holders.<sup>38</sup> If a patent is valid and infringed, and the patent holder and implementer cannot agree on licensing terms, injunctions are necessary to enforce the patent right and should not be categorically denied.

## V. Conclusion

Reliable patent protections—including for standard essential patents (SEPs)—are critical to U.S. global competitiveness and technology leadership. At a time when the United States and China battle daily for technological superiority, U.S. innovators need certainty that their IP rights will be respected in the United States and around the world to incentivize the risky investments in R&D that lead to the invention and commercialization of critical and emerging technologies.

Preserving incentives for U.S. innovators to invest in R&D and contribute their inventions to global standards ensures U.S. technologies can compete for global standards leadership. According to one report sponsored in part by the State Department, the United States already lags China in 37 out of 44 emerging technology areas, including defense, biotechnology, artificial intelligence, and advanced manufacturing. Weakening U.S. IP protections reduces R&D incentives, cripples the ability of U.S. innovators to compete

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<sup>36</sup> USPTO & USDOJ, Statement of Interest in *Radian v. Samsung* (June 26, 2025) (“In short, the prospect of an injunction can facilitate negotiation among the parties. By contrast, without an injunction, a patentee would lose control of their unique asset—their patent—including whether or how its patented invention is distributed in the marketplace. . . . The possibility of an injunction also helps prevent potential licensees from viewing infringement as economically efficient, which would further erode the patent’s value and the patentee’s control over it.” (internal citations omitted)).

<sup>37</sup> USPTO & USDOJ, Joint Public Interest Comment in 337-TA-3854 (Nov. 25, 2025) (“Without the exclusive rights that patents secure, breakthrough innovations would remain stranded in laboratories and workshops rather than reaching consumers through competitive market.”).

<sup>38</sup> DOJ, Statement of Interest in *Disney v. Interdigital* (Oct. 6, 2025) (“The guarantee of market-driven financial rewards is a powerful incentive for inventors to invest in developing new technologies. Such innovation is essential to a vibrant free market, and strong intellectual property rights help facilitate market entry and level the competitive playing field for small innovative companies. Without strong IP protection, a larger firm is generally better able to misappropriate smaller companies’ innovations. The U.S. patent regime reduces the influence of market size and market share on the ability to innovate and the capacity to compete.”)

with China in key technology areas, and legitimizes efforts by China to devalue U.S. inventions to benefit its own domestic industries.

In addition to strengthening IP protections domestically and supporting U.S. innovation leadership by bolstering participation in global standards setting, the Administration should identify ongoing developments around the world that degrade U.S. patent rights and unfairly disadvantage U.S. innovators. Ensuring the 2026 Special 301 Report documents and tracks global trends toward unfair treatment of U.S. IP is a critical step in urging our trading partners—especially in Europe—to stand up for strong patent rights and the rule of law.

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## APPENDIX

John A. Squires, Remarks to IP Attachés, Dec. 8, 2025, <https://www.uspto.gov/about-us/news-updates/remarks-director-squires-ip-attache-updates-around-globe> (“The IP that is being created in the United States in all of its forms—technology, brands, artistic creations, movies, and music—this is the driving force of the global economy. Intellectual property holds the key to ushering in a new era of unsurpassed economic prosperity for our country. And it is of course essential that we protect these assets.”)

USPTO & USDOJ, Joint Public Interest Comment in 337-TA-3854 (Nov. 25, 2025), <https://www.justice.gov/atr/media/1419496/dl> (“Without the exclusive rights that patents secure, breakthrough innovations would remain stranded in laboratories and workshops rather than reaching consumers through competitive market.”).

USPTO, Revision to Rules of Practice Before the Patent Trial & Appeal Bd., 90 Fed. Reg. 48335 (Oct. 17, 2025). (“Invention and the issuance of a patent represent just the beginning of the economic cycle of innovation. After an invention is conceived and patented, substantial investment is necessary to bring a product or service to market. Without this additional investment, the invention may remain in the laboratory, never reaching the public as a commercial product or service. Reliable patent rights encourage the inventor or others to invest in the patented technology by giving them confidence that they, not competitors, will reap the benefits of their efforts. However, every party accused of infringing a patent receives a full opportunity to challenge the validity of the patent in district court. If investors lack confidence that a patent will be found valid when it is enforced, the patent will not give them the assurances they need to invest.”).

S. Comm. on the Judiciary, Subcomm. on Intellectual Property, *H’rg on “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System,”* Oct. 9, 2025 (Statement of John A. Squires), <https://www.uspto.gov/about-us/news-updates/statement-director-squires-united-states-senate-subcommittee-intellectual> (“Economically, expansive patent eligibility ensures that inventors can secure funding, build companies, and generate jobs. The innovation economy is not confined to Silicon Valley; it stretches across every state, from manufacturing hubs to research hospitals, from university laboratories to startup incubators. Every patent issued represents not only a piece of intellectual property but also a potential job, a competitive advantage, a business formed, and an industry strengthened.”).

DOJ, Statement of Interest in *Disney v. Interdigital* (Oct. 6, 2025), <https://www.justice.gov/atr/media/1416101/dl> (“The guarantee of market-driven financial rewards is a powerful incentive for inventors to invest in developing new technologies. Such innovation is essential to a vibrant free market, and strong intellectual property rights help facilitate market entry and level the competitive playing field for small innovative companies. Without strong IP protection, a larger firm is generally better able to misappropriate smaller companies’ innovations. The U.S. patent regime reduces the influence of market size and market share on the ability to innovate and the capacity to compete.”)

John A. Squires, Ceremonial Swearing-in Remarks, U.S. Patent & Trademark Off., Sept. 23, 2025, <https://www.uspto.gov/about-us/news-updates/ceremonial-swearing-remarks-john-squires>

("Make no mistake: the strength of our patent and trademark systems is tied directly to the strength of our economy. Virtually one and the same. Intellectual property fuels entrepreneurship. It attracts capital. It creates jobs. It empowers small businesses to compete and enables large enterprises to grow. It is the connective tissue between the idea in a garage and the product on the global market, between a new business and a trusted brand. When we protect ideas and identities well, we build industries. When we do it consistently, we build confidence. And when we do it together, we build a future that is bold, resilient, and fueled by the boundless ingenuity and steely resolve of the American people.").

Dina Kallay, Keynote at Concurrences Dinner in New York, U.S. Dep't of Justice, Sept. 19, 2025, <https://www.justice.gov/opa/speech/daag-dina-kallay-delivers-keynote-concurrences-dinner-new-york> ("We at the Antitrust Division will continue to remain vigilant about competitive issues that arise at the interface of antitrust and intellectual property, including those involving standards development processes. Competition and innovation drive the U.S. economy and greatly benefit American consumers — it is our mission to ensure that they are alive and well.").

USPTO & USDOJ, Statement of Interest in *Radian v. Samsung* (June 26, 2025), <https://www.justice.gov/atr/media/1404506/dl?inline> ("In short, the prospect of an injunction can facilitate negotiation among the parties. By contrast, without an injunction, a patentee would lose control of their unique asset—their patent—including whether or how its patented invention is distributed in the marketplace. . . . The possibility of an injunction also helps prevent potential licensees from viewing infringement as economically efficient, which would further erode the patent's value and the patentee's control over it." (internal citations omitted)).

Letter from President Donald J. Trump to OSTP Director Michael Kratsios, March 26, 2025, <https://www.whitehouse.gov/briefings-statements/2025/03/a-letter-to-michael-kratsios-director-of-the-white-house-office-of-science-and-technology-policy/> ("We need to accelerate research and development, dismantle regulatory barriers, strengthen domestic supply chains and manufacturing, spur robust private sector investment, and advance American companies in global markets. Rival nations are pushing hard to overtake the United States, and we must blaze a bold path to maintain our technological supremacy.")