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Judge Paul Michel (Ret.), Board Member
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Frank Cullen, Executive Director

October 19, 2023

The Honorable Gina Raimondo
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Raimondo,

As you know, European officials will travel to Washington on Friday for a [summit](#) on economic cooperation between the United States and the European Union. On behalf of the Council for Innovation Promotion (C4IP), we urge you to raise a critically important issue with your counterparts, specifically, the European Commission's misguided proposal on standard-essential patents. If finalized, it would undermine the very technological and economic goals that U.S. and EU officials want to achieve.

C4IP is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere.

Standard-essential patents, or SEPs, are a critical component of the innovation ecosystem. These are patents covering shared industry "standards" -- like 5G, Wi-Fi, or USB ports -- that make sure key technologies are interoperable.

Right now, owners of standard-essential patents are required to make their technology available for other companies to license on fair, reasonable, and non-discriminatory terms. But the specifics of each licensing deal are left to companies to negotiate amongst themselves. The status quo works well. It encourages companies, even direct competitors, to work towards compatibility. And it ensures that a single SEP owner can't hold up an entire industry by refusing to license its intellectual property.

Since the earliest days of industrialization, standards have been an economic boon, boosting productivity, innovation, and trade. A [report](#) by the economic consultancy Compass Lexecon found that depending on the time period and country, standards have been responsible for between 7.4% and 63.3% of GDP growth. And a 2021

[study](#) by the International Organization for Standardization reported that even a small increase in standards leads to a higher GDP across seven developed countries.

The global system of standards -- and SEPs -- is flourishing in its present form, fueling innovation in Europe, the United States, and beyond. It hasn't required any government intervention beyond court enforcement of patent rights.

Yet despite having no clear reason to do so, the Commission now aims to saddle the current order with onerous regulations.

The proposed new rules would establish a "Competency Centre" at the European Union Intellectual Property Office (EUIPO) -- an extra-national body with no history or experience handling SEPs -- to assume control over all SEP licensing and regulation. This would undermine the current regulatory framework in two important ways.

First, it would reduce the enforceability and value of SEPs, thereby eroding incentives to develop new technology compatible with industry standards.

Under the new system, SEP holders would be barred from enforcing their patents until they've jumped through certain regulatory hoops and the EUIPO has unilaterally determined a "fair" licensing fee. In practice, this would give patent thieves a guaranteed period during which they could infringe upon an SEP without accountability.

Furthermore, the EUIPO's "fair" licensing fees will likely be below what private parties would agree to otherwise, igniting a global race to the bottom for SEP licensing fees. Our mutual rivals would love nothing more. Chinese government officials have worked to depress Western SEP royalty rates and prevent SEP holders from enforcing their intellectual property rights in Western courts. The Commission's proposal would only make Beijing's task easier.

Second, the European Commission's proposal would upend precedents that innovators have relied on for decades, raising uncertainty around whether patents truly grant meaningful rights, or are simply government favors that can be retracted or have their value arbitrarily reduced by bureaucrats.

It's critical that EU and U.S. officials discuss these tradeoffs at the upcoming summit. Failure to carefully consider them could harm quality of life, economic growth, technological leadership, and innovation in both the United States and Europe.

We sincerely appreciate your time. If you need any further information from C4IP either before or after this week's summit, we would be happy to provide it.

Sincerely,

Andrei Iancu

Chairman of the Board

Council for Innovation Promotion (C4IP)

David Kappos

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cc:

Director Kathi Vidal, United States Patent and Trademark Office

Director Laurie E. Locascio, National Institute of Standards and Technology