



Andrei Iancu, Co-Chair
David Kappos, Co-Chair
Judge Paul Michel (Ret.), Board Member
Judge Kathleen O'Malley (Ret.), Board Member
Frank Cullen, Executive Director

December 17, 2024

The Honorable Chris Coons
Chairman
Senate Judiciary Committee Intellectual
Property Subcommittee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
Ranking Member
Senate Judiciary Committee Intellectual
Property Subcommittee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Coons and Ranking Member Tillis:

I write on behalf of the Council for Innovation Promotion (C4IP) to express our strong support for S. 4840, the RESTORE Patent Rights Act, in advance of your upcoming hearing on “The RESTORE Patent Rights Act: Restoring America’s Status as the Global IP Leader” on December 18, 2024. C4IP applauds Chairman Coons and Senator Cotton for introducing this bill, and the Subcommittee, under your leadership, for holding this hearing to thoroughly consider it and the important, much-needed change that it would bring to our nation’s intellectual property system.

C4IP is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere. C4IP is chaired by two former directors of the U.S. Patent and Trademark Office (USPTO), Andrei Iancu and David Kappos, who served under the Trump and Obama administrations, respectively. Our board also includes two retired judges from the Court of Appeals for the Federal Circuit, which has exclusive jurisdiction over patent cases, former Chief Judge Paul Michel and Judge Kathleen O’Malley.

We have deep concerns about the impact of the Supreme Court’s decision in *eBay v. MercExchange*, which — regardless of what may have been the limited intent of the wording of the decision — has greatly depressed the rates at which courts have been willing to stop ongoing infringement of patents adjudicated as valid with injunctive relief. A right without a meaningful remedy cannot supply the incentives needed to fund research-intensive R&D, resulting in a weakened innovation economy. The RESTORE Patent Rights Act is a straightforward, targeted bill that addresses and fixes this court decision by reestablishing regular injunctive relief as the appropriate remedy in patent cases.

Injunctions have for centuries been the default legal remedy applied in cases of patent infringement.¹ They are essential to upholding the intellectual property rights enshrined in the Constitution, which guarantees patent holders, for a limited time, “the exclusive Right” to their inventions.²

Injunctions are appropriate and necessary to rectify unauthorized patent use, which typically cannot be compensated simply through monetary awards alone. To analogize to real property, it would not be enough for a court to rule that an unwelcome squatter must pay to stay in your house; you need a court order requiring them to leave.

Unfortunately, injunctive relief has become increasingly unavailable to inventors in recent years following the *eBay v. MercExchange* decision. Grants of permanent injunctions have fallen by 66% for companies that manufacture their own products that are covered by patents asserted in litigation and by over 90% for those that do not.³

Lack of regular injunctive relief puts America’s economic and technological dominance at risk. It undermines the patent protections that innovative startups and small inventors depend on to secure investment and compete with larger companies. It allows these wealthy, larger companies to steal with impunity from their smaller rivals and face minimal consequences when caught. This lack of ability to exclude infringers also distorts the free market for the transfer of intellectual property, decreases the ability of parties to achieve negotiated licenses, and increases litigation as a vehicle to resolve disputes. At a time when the United States is facing unprecedented economic and national security threats from abroad, including from countries like China, it is critical to restore injunctive relief in order to ensure that our patent system supports the inventors who keep our innovation engine running.

The RESTORE Patent Rights Act would be a step towards rectifying and solidifying American technological leadership by reestablishing injunctive relief as the default remedy for patent infringement. That is the best way to ensure that inventors whose patented technology is unlawfully taken are made whole. It would strengthen Americans’ trust in the patent system and spur innovation across our economy.

[1] Adam Mossoff, *Injunctions for Patent Infringement: Historical Equity Practice Between 1790 - 1882* Harvard Journal of Law & Technology (forthcoming), <https://ssrn.com/abstract=4870351>

[2] U.S. Const. art. I, § 8, cl. 8.

[3] *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006); Sue Ann Mota, *eBay v. MercExchange: Traditional Four-Factor Test for Injunctive Relief Applies to Patent Cases, According to the Supreme Court*, Akron Law Review (2007), <https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1226&context=akronlawreview>.

C4IP thanks you again for holding a hearing on this important bill and considering our perspectives. We hope you and your colleagues will build on this hearing by taking actions to move forward with the further consideration and passage of the RESTORE Patent Rights Act.

Sincerely,

A handwritten signature in black ink, which appears to read 'Frank Cullen', is positioned below the word 'Sincerely,'.

Frank Cullen
Executive Director
Council for Innovation Promotion (C4IP)

cc:

- Sen. Dick Durbin, Chairman, Senate Judiciary Committee
- Sen. Lindsey Graham, Ranking Member, Senate Judiciary Committee
- Sen. Alex Padilla, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. John Cornyn, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. Jon Ossoff, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. Marsha Blackburn, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. Mazie Hirono, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. Peter Welch, Member, Senate Judiciary Subcommittee on Intellectual Property
- Sen. Tom Cotton, Member, Senate Judiciary Subcommittee on Intellectual Property