



Dear Big Tech Lobbyists,

Your letter to President Trump was full of factual errors and misleading claims. Please see my comments below and redo the assignment to instead explain why standard essential patents are so important to America's economic competitiveness.

January 17, 2025

President Donald J. Trump
Presidential Transition Office
Mar-a-Lago Club
1100 South Beach Boulevard
Palm Beach, FL 33480

Sincerely,
Professor SEPs

Dear President-elect Trump and members of the Presidential Transition Office,

~~American leadership in emerging technologies like the Internet of Things (IoT) and artificial intelligence is key to achieving President Trump's goal of ensuring America's prosperity into the future. But American leadership in these strategically important areas can be achieved only if American businesses can predictably use the technical standards that support them.~~

Collaboratively developed voluntary standards, such as 5G and Wi-Fi, are what products like mobile phones, medical devices, cars, and advanced manufacturing systems rely on to interoperate. But innovative American manufacturers who make products that use these standards are being extorted by weaponization of the legal system here and abroad by entities ~~claiming to hold patents~~ that cover the standard. These manufacturers risk having their product sales blocked entirely unless they pay ~~excessive, unreasonable fees~~, which are tantamount to a ~~foreign tax~~ on these American businesses.

It is critical that the Trump Administration stop hostile foreign companies, and abusive patent holders more generally, ~~from unfairly and unreasonably holding standardized technologies hostage~~ and depriving American businesses and citizens of their benefits. The Trump Administration should ensure that these patent holders comply with the voluntary but irrevocable commitments they made up-front during standards development to license their patents essential to these standards (standard essential patents, or SEPs) on fair, reasonable and non-discriminatory (FRAND) terms.

We urge the Trump Administration to promote American business innovation and continued technological leadership by pursuing policies to ~~curtail abusive use of SEPs.~~

I. **Protect American businesses** and prevent hostile foreign companies and other SEP abusers from driving up costs for Americans:

- Work with Congress to pass legislation and explore other means to ~~create consequences for SEP holders who seek to use foreign SEP injunctions to coerce~~ excessive royalties on products sold in the United States.
- Advocate to foreign governments to limit the availability of SEP injunctions in foreign courts to protect businesses and consumers from ~~unfair and unreasonable demands~~ by SEP holders.

Technological standards are developed through a rigorous, transparent process within recognized standard setting organizations, during which technical experts like researchers and government representatives evaluate competing technologies to determine which contributions are essential. This ensures that only the most integral technology becomes part of the new standard, along with their associated patents.

These royalties are overwhelmingly a benefit to U.S. companies. In 2023, U.S. companies collected nearly three times as much in licensing fees from foreign companies as they paid out.

U.S. business innovation and leadership are best served by supporting strong and effective protection for SEPs, which allows U.S. companies to access and implement new standards while facilitating payment for, and thereby encouraging, the continued development of the next improvement on that standard.

Injunctions, which forbid patent infringers from using the technology others developed after the patent owner has won their court case, promote a business environment where parties are more likely to reach licensing deals. Without this penalty on the table, users of technology are better off delaying reaching a deal as long as they can, secure in the knowledge that at worst, a U.S. court is only to require them to pay the licensing fee they should have paid up front. The real problem is that U.S. litigants now need to go to foreign courts to try to seek injunctions on their foreign patents because the U.S. injunctive remedy has been effectively neutered by U.S. courts.

American leadership in emerging technologies depends not just on access to existing standards, but on the standard essential patents (SEPs) that drive their continued development. U.S. leaders must strengthen SEPs — not undermine them — so that American innovators can continue to set technical standards instead of following those created by foreign competitors.

The law requires standard essential patent owners to license their technology on fair, reasonable, and non-discriminatory ("FRAND") terms. Licensing fees are typically low to encourage adoption — \$30 to permanently incorporate 5G technology in a car, for example — and serve to incentivize further innovation in these technologies.

SEP owners have every incentive to license their patents at fair rates, since they benefit when more companies use their technologies. The false theory of SEP owner "hold-up" has been debunked by numerous studies, which show SEP owners do not inappropriately leverage their patents. The real problem is "hold-out" by the Big Tech companies that can afford to stonewall licensors by continuing to use the technology incorporated into the standard while failing to pay a reasonable royalty for it.

As above, the real outrage is that U.S. companies need to go to foreign courts because our own do not offer adequate relief. This puts innovative startups, some of which only have U.S. patents, at the mercy of Big Tech companies who know they can get away with using their technology for free. Plus, the idea that a SEP license might be "unreasonable" is a red herring — an unreasonable license would be vulnerable to litigation on the basis that SEP owners are required to offer reasonable licenses. And as I noted earlier, SEP owners benefit when more companies use their technologies — so they also have good business reasons to license their patents at reasonable rates.

The eBay decision upended centuries of legal precedent and, in practice, deprives startups and small businesses of fair compensation for their patented innovations by reducing incentives for larger companies to negotiate licenses. Rolling back eBay and restoring injunctive relief would simply ensure that U.S. innovators can bring SEP implementers to the negotiating table without needing to involve foreign courts.

- File amicus briefs supporting limits on obtaining foreign SEP injunctions, to curtail the harmful impact of these injunctions and huge “security deposit” demands on businesses.

II. **Strengthen American investment** in cutting-edge industries through predictability in SEP licensing:

- Strongly oppose any legislation that would roll back *eBay*, the unanimous Supreme Court decision that got rid of special injunction rules for patents, and would allow SEP abusers to ~~prevent American companies from making or selling innovative products.~~
- Reform the U.S. International Trade Commission’s policies and practices to curtail hostile foreign companies and other SEP abusers from ~~threatening import bans~~ to extract excessive, non-FRAND royalties, which increase costs for American businesses and consumers.
- ~~Publish guidance providing predictable standards for SEP royalties to reward inventors only for the fair value of their patents and not, for example, for technologies they did not invent.~~
- Maintain cost-effective avenues to correct ~~agency errors in issuing invalid patents through the Patent Trial and Appeal Board.~~

The ITC’s ability to prevent patent-infringing products from being imported into the United States is crucial to ensure that American businesses can compete with the world. Weakening the ITC’s power to issue import bans would help hostile foreign companies steal cutting-edge American technology and undermine our economy’s global standing.

III. **Deter SEP abusers** that weaponize their SEPs to harm American businesses:

- Prioritize enforcement actions against hostile foreign companies and others that violate U.S. antitrust law or engage in unfair or deceptive acts or practices by engaging in SEP abuse.
- Work with stakeholders to identify the extent to which component manufacturers are denied licenses on FRAND terms, and develop and implement recommendations to remedy the situation.
- Support litigation transparency legislation to require disclosure of third-party litigation financing and investigate for possible involvement of foreign adversaries as litigation funders.

The myth that the United States issues an excessive number of invalid patents was debunked by the recent Sunwater Institute study. The PTAB also has a host of problems — and gives corporate giants a huge advantage over innovative startups and inventors.

As the new administration considers policies that promote American business innovation and technological leadership, we stand ready to work with your team.

Sincerely,

Save Our Standards Coalition
ACT | The App Association
Alliance for Automotive Innovations
Computer and Communications Industry Association (CCIA)
Center for Democracy and Technology
Engine
High Tech Inventors Alliance (HTIA)
National Retail Federation (NRF)
Public Knowledge

Top-down government regulation of SEP licensing rates would play into the hands of rivals like China, which is trying to end the free-market licensing system under which U.S. companies currently thrive. The EU realized how misguided its own top-down SEP proposal was and withdrew it. And SEP royalties are already predictable — licensors regularly publish their licensing rates for all to see.