



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

March 17, 2026

The Honorable Chuck Grassley  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Dick Durbin  
Ranking Member  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Durbin:

I am writing on behalf of the Council for Innovation Promotion (C4IP) to thank the Committee for holding the March 17, 2026 hearing on “Stealth Stealing: China’s Ongoing Theft of U.S. Innovation.” We share serious concerns about China’s efforts to illicitly obtain U.S. intellectual property and, more recently, its efforts to shape its intellectual property framework to systematically disadvantage American and other foreign entities while favoring domestic competitors. We are also deeply concerned that the United States’ intellectual property system has been significantly weakened over the past two decades — and now compares unfavorably to China’s own IP system in critical respects. This is not merely a legal or technical problem; it is a strategic one that demands congressional attention to ensure that U.S. innovation thrives and that U.S. innovators are fully supported at home as they compete on the global stage.

The Council for Innovation Promotion (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 Presidents Trump and Obama, respectively. Our board further includes two retired judges from the Court of Appeals for the Federal Circuit, former Chief Judge Paul Michel and Judge Kathleen O’Malley. It also features two distinguished public servants: Lamar Smith, former U.S. Representative for Texas’s 21st congressional district and Chairman of the House Judiciary Committee, and Gary Locke, former Governor of Washington, U.S. Secretary of Commerce, and U.S. Ambassador to China under President Obama.

China’s ambition to achieve global leadership in strategically critical technologies is not incidental, it is a matter of explicit national policy. China’s 14th Five-Year Plan (2021-2025) identified technological self-sufficiency as essential to China’s long-term economic, social,

and national security objectives, designating “frontier technologies,” such as artificial intelligence, semiconductors, biotechnology, and quantum information, as areas for concentrated national resources and breakthroughs.<sup>1</sup> The incoming 15th Five-Year Plan (2026-2030) looks to continue and sharpen this agenda, with recommendations aimed at significantly improving scientific and technological self-reliance.<sup>2</sup>

To achieve these ends, China has deployed a diverse array of tactics. As the title of this hearing indicates, state-sanctioned or sponsored theft remains one of these approaches — and it is a real and costly problem. The Commission on the Theft of American Intellectual Property has estimated that Chinese theft of American IP costs between \$225 billion and \$600 billion annually.<sup>3</sup> While those challenges remain serious, the landscape has evolved. Increasingly, China is employing more sophisticated strategies — using regulatory processes, procedural mechanisms, and ostensibly neutral policy frameworks to disadvantage U.S. companies abroad while favoring domestic or preferred foreign competitors and advancing other national priorities.

China’s harmful actions toward U.S. IP holders take many forms. For example, in the pharmaceutical sector, China restricts eligibility for patent term extensions to drugs defined as “new,” a definition that requires first marketing approval to occur in China. This framework penalizes foreign innovators who may prefer to launch their products in their home markets before entering China, thereby depriving them of the patent term protections afforded to domestic competitors.<sup>4</sup> China’s patent linkage system is similarly deficient: it provides only a nine-month regulatory stay of generic approval (compared to 30 months in the United States) to adjudicate outstanding patent infringement allegations.<sup>5</sup> Beyond pharmaceuticals, China’s counterfeit goods problem remains staggering in scale, with Chinese-origin goods dominating global trade in fakes.<sup>6</sup>

[1] Chinese National People’s Congress, *The 14th Five-Year Plan for National Economic and Social Development of the People’s Republic of China and the Long-Range Objectives Through the Year 2035* (adopted March 2021), translation available at <https://cset.georgetown.edu/publication/china-14th-five-year-plan/>.

[2] China Briefing, *China’s 15th Five-Year Plan Recommendations – Key Takeaways for Foreign Businesses* (Oct. 28, 2025), <https://www.china-briefing.com/news/chinas-15th-five-year-plan-recommendations-key-takeaways-for-foreign-businesses/>.

[3] National Bureau of Asian Research, *The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property* (2017 update), [https://www.nbr.org/wp-content/uploads/pdfs/publications/IP\\_Commission\\_Report\\_Update.pdf](https://www.nbr.org/wp-content/uploads/pdfs/publications/IP_Commission_Report_Update.pdf).

[4] Audrey Cheung, Jennifer Che, Yolanda Wang, *A More Detailed Overview of China’s Patent Term Extension (PTE) System* (Nov. 20, 2025), <https://chinapatentstrategy.com/a-more-detailed-overview-of-chinas-patent-term-extension-pte-system/>.

[5] Kexin Yang, *China’s Supreme People’s Court Issued Its First Patent Linkage Decision*, Harvard J. of L. & Tech., (Nov. 14, 2022), <https://jolt.law.harvard.edu/digest/chinas-supreme-peoples-court-issued-first-patent-linkage-decision>.

[6] OECD & European Union Intellectual Property Office, *Mapping Global Trade in Fakes 2025: Global Trends and Enforcement Challenges* (2025) (reporting that approximately 75% of the value of approximately \$467 billion in global counterfeit trade from China and its territories in 2021), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/05/mapping-global-trade-in-fakes-2025\\_5c812e3c/94d3b29f-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/05/mapping-global-trade-in-fakes-2025_5c812e3c/94d3b29f-en.pdf).

Chinese court practices further disadvantage foreign IP holders through onerous evidentiary requirements for initial complaints — required before any discovery has occurred — and a persistent lack of transparency in judicial decisions.<sup>7</sup> Most recently, Chinese courts have gone further still, asserting the right to set global royalty rates for standard-essential patents (SEPs) without the consent of the patent owner and in direct contravention of other nations’ sovereign authority to govern patent policy within their own borders.<sup>8</sup>

The United States can and should continue to use all available tools to put an end to these unfair practices. On the diplomatic front, C4IP has recommended strong and sustained pressure on China by holding China accountable for its unfulfilled commitments under the Phase One Agreement and, building on that foundation, ensuring that China remains on the U.S. Trade Representative’s (USTR) Priority Watch List until its IP practices are fair to U.S. participants.<sup>9</sup> This is in line with the findings of the USTR’s 2025 Special 301 Report itself, which found that China has failed to implement or only partially implemented a number of its IP commitments under the Phase One Agreement, leading the USTR to formally initiate a Section 301 investigation into China’s Phase One compliance in October 2025.<sup>10</sup>

Congress has an important role to play in this effort. By encouraging robust executive branch engagement, highlighting concerns through hearings and correspondence such as this one, and where diplomatic tools prove insufficient, considering targeted legislative responses, Congress can signal clearly to China that the costs of continued noncompliance will rise. This Committee’s attention to these issues is itself a meaningful contribution to that effort.

Confronting China’s unfair practices, however, is not sufficient on its own to secure America’s continued leadership in innovation. The United States must also reckon with China’s substantial and growing legitimate investments in research and development — investments that are central to its strategy for achieving global technological leadership. For the first time in history, China surpassed the United States in 2024 to become the world’s

[7] Lionel M. Lavenue, Alvin Xu, Chuanwen Zhou, Guanshi Li, Caitlin T. Coverstone, *Comparing Patent Infringement Litigation: China vs. United States - Pleading Standards and Discovery in Patent Cases*, Finnegan (Nov. 25, 2025), <https://www.finnegan.com/en/insights/articles/Comparing-patent-infringement-litigation-china-vs-united-states-pleading-standards-and-discovery-in-patent-cases.html>; Kirti Gupta and Mark Cohen, *The New SEP Powerhouse: How China is Shaping Global Patent Disputes*, CSIS (May 7, 2025), <https://www.csis.org/blogs/perspectives-innovation/new-sep-powerhouse-how-china-shaping-global-patent-disputes>.

[8] Gupta and Cohen, *supra* note 7.

[9] C4IP, *2026 Special 301 Review Comment* (Jan. 28, 2026), [https://c4ip.org/wp-content/uploads/2026/01/Council-for-Innovation-Promotion\\_2026-Special-301\\_Review\\_Comment.pdf](https://c4ip.org/wp-content/uploads/2026/01/Council-for-Innovation-Promotion_2026-Special-301_Review_Comment.pdf).

[10] USTR, *USTR Initiates Section 301 Investigation of China’s Implementation of the Phase One Agreement* (Oct. 2025); see also USTR, *2025 Special 301 Report* (Apr. 29, 2025) (placing China on the Priority Watch List and finding partial or failed implementation of Phase One IP commitments), [https://ustr.gov/sites/default/files/files/Issue\\_Areas/Enforcement/2025%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20(final).pdf)

largest R&D spender, investing an estimated \$785.9 billion compared to the United States' \$781.8 billion.<sup>11</sup> Moreover, between 2014 and 2024, on a size-adjusted basis, the United States lost its lead private sector investment in four of nine advanced industry sectors, with China narrowing the gap on the remaining five.<sup>12</sup> Other research shows that China is the global leader in 66 out of 74 critical areas of emerging technology compared to the United States's lead in just the remaining eight.<sup>13</sup>

In the face of this disparity, revitalizing U.S. intellectual property law is critical, given the central role of IP in protecting significant, long-horizon investments in innovation that are essential for turning nascent ideas into useful technologies for everyday life. Yet China has been aggressively strengthening its own intellectual property system as a pillar of its technology strategy, while the United States has allowed its own system to weaken. A series of court decisions, executive actions, and legislative changes over the last two decades has weakened IP rights in the United States.

As a result, Chinese patent law now offers inventors stronger protections than U.S. law in several critical respects. On patent eligibility, which is the threshold question of what types of innovations the patent system will protect, China's approach has been consistently more permissive and more predictable than that of the United States. While China has been steadily expanding patent eligibility for innovations in software, fintech, and biotechnology, the United States has been making it harder to obtain such patents, a trend that is harmful to investment and innovation.<sup>14</sup> The divergence is particularly acute in the strategic technology sectors — including artificial intelligence, biotechnology, and software-implemented inventions — where the competition with China is most intense.

On injunctive relief, the disparity is equally troubling: Chinese courts routinely grant injunctions to prevailing patent holders, while U.S. courts, following the Supreme Court's *eBay Inc. v. MercExchange* decision, have significantly curtailed that remedy — leaving American patent holders with weaker tools to stop ongoing infringement after winning in court. The ability of patent owners to enforce their rights has been further undermined

[11] WIPO, *End of Year Edition – Despite the Odds, Global R&D Spending Grew Again in 2024, Inching Closer to the USD 3 Trillion Mark* (Dec. 2025), <https://www.wipo.int/en/web/global-innovation-index/w/blogs/2025/end-of-year-edition>.

[12] Information Technology and Innovation Foundation (ITIF), *China Is Rapidly Catching Up in Advanced Industry R&D as U.S. Advantage Narrows* (Feb. 9, 2026), <https://itif.org/publications/2026/02/09/china-is-rapidly-catching-up-in-advanced-industry-r-and-d-as-us-advantage-narrows-new-report-finds/>.

[13] Jennifer Wong-Leung, Stephan Robin and Linus Cohen, *ASPI's Critical Technology Tracker: 2025 updates and 10 new technologies* (2025), <https://www.aspi.org.au/strategist-posts/aspis-critical-technology-tracker-2025-updates-and-10-new-technologies/>.

[14] See C4IP, *Why C4IP Supports the Patent Eligibility Restoration Act of 2025 (PERA)* (Oct. 24, 2025), <https://c4ip.org/why-c4ip-supports-the-patent-eligibility-restoration-act-of-2025-pera/>.

by the implementation of post-grant review proceedings at the Patent Trial and Appeal Board (PTAB). For too long, patent challengers have been permitted to mount unrestricted, duplicative, and repetitive attacks on the same patent, systematically undermining patent holders' ability to obtain timely and meaningful relief from infringement.

For these reasons, C4IP has strongly supported a set of three bipartisan, bicameral patent reform bills that would directly address each of these deficiencies and restore the United States' position as the world's preeminent patent system. These bills are:

- **The Patent Eligibility Restoration Act (PERA) (S. 1546 / H.R. 3152)**, which addresses the restrictive judicial interpretations that have progressively narrowed patent eligibility under 35 U.S.C. § 101. By restoring a more predictable and inclusive eligibility framework, PERA would reinforce U.S. leadership in global technology and ensure that American innovators — particularly in biotechnology, artificial intelligence, and software — can compete on equal footing with rivals whose patent systems impose no comparable limitations.
- **The RESTORE Act (S. 708 / H.R. 1574)**, which reinstates meaningful injunctive relief for patent holders who prevail in infringement cases, creating a rebuttable presumption in favor of permanent injunctions. Effective injunctive remedies are essential to ensure that infringement is not treated merely as a cost of doing business. Recent judicial interpretations have made injunctions harder to obtain in U.S. courts, forcing some companies — particularly larger ones with the resources to litigate abroad — to seek equivalent relief in jurisdictions such as Germany, the European Union, and China. Smaller firms and individual inventors rarely have that option.
- **The PREVAIL Act (S. 1553 / H.R. 3160)**, which modernizes post-grant review proceedings at the USPTO's Patent Trial and Appeal Board (PTAB), reducing duplication with district courts and the International Trade Commission (ITC) and harmonizing standards across forums. By requiring challengers to select a single forum and aligning PTAB claim construction and burden-of-proof standards with those used in federal courts, the PREVAIL Act eliminates redundant and repetitive challenges to the same patent, restores predictability for patent holders, and enhances transparency. These reforms strengthen patent reliability for companies of all sizes and ensure that U.S. innovators can compete globally with confidence in their rights.

A strong and reliable intellectual property system is the foundation of the American innovation economy. Without the reforms described above, the United States will be competing head-to-head with China with one hand tied behind its back. This is especially true because the American innovation model has long distinguished itself by the critical role of private sector-led research and development. That model depends entirely on reliable, enforceable IP rights: without them, the long-term, high-risk investments that produce transformational breakthroughs will not be made.

The contrast with China's model is instructive. Unlike the United States, where R&D is more heavily concentrated in universities and the private sector, China channels a significant portion of research funding directly through government labs and mission-driven institutes.<sup>15</sup> In such a system, the patent system complements state investment. However, researchers and companies can still receive government backing even when they are not commercially competitive — a cushion that does not exist for most private sector American innovators. This asymmetry makes strong patent protections not merely desirable for the United States, but essential.

At the same time, it points to one of America's greatest and most durable competitive advantages: a system in which individuals with transformative ideas are empowered to pursue them on their own terms, unconstrained by the need to fit within a government's five-year plan. The United States system is uniquely fertile ground for unexpected, disruptive innovation to flourish — the kind that cannot be centrally planned or state-directed. That advantage is not guaranteed; it must be actively protected. We urge the Committee to advance the reforms described in this letter, and we thank the Committee for its attention to these critical issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank Cullen', is positioned below the text 'Respectfully submitted,'.

Frank Cullen  
Executive Director  
Council for Innovation Promotion (C4IP)

[15] CSIS, *Competing with China's Public R&D Model: Lessons and Risks for U.S. Innovation Strategy* (Feb. 2026), <https://www.csis.org/analysis/competing-chinas-public-rd-model-lessons-and-risks-us-innovation-strategy>.

cc:

Sen. Marsha Blackburn, Member, Senate Committee on the Judiciary  
Sen. Richard Blumenthal, Member, Senate Committee on the Judiciary  
Sen. Cory Booker, Member, Senate Committee on the Judiciary  
Sen. Katie Britt, Member, Senate Committee on the Judiciary  
Sen. Chris Coons, Member, Senate Committee on the Judiciary  
Sen. John Cornyn, Member, Senate Committee on the Judiciary  
Sen. Ted Cruz, Member, Senate Committee on the Judiciary  
Sen. Lindsey Graham, Member, Senate Committee on the Judiciary  
Sen. Josh Hawley, Member, Senate Committee on the Judiciary  
Sen. Mazie Hirono, Member, Senate Committee on the Judiciary  
Sen. John Kennedy, Member, Senate Committee on the Judiciary  
Sen. Amy Klobuchar, Member, Senate Committee on the Judiciary  
Sen. Mike Lee, Member, Senate Committee on the Judiciary  
Sen. Ashley Moody, Member, Senate Committee on the Judiciary  
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