February 25, 2026

Claire Avery-Page
Director for Innovation and Intellectual Property
Office of the United States Trade Representative
Executive Office of the President
600 17th Street NW
Washington, District of Columbia 20508

RE: ***Post-Hearing Comments of ACT | The App Association, U.S. Trade Representative's Public Hearing Regarding the 2026 Special 301 Review [USTR-2025-0243]***

Dear Ms. Avery-Page:

ACT | The App Association (ACT) submits this reply comment to the Office of the United States Trade Representative's (USTR) public hearing regarding the 2026 Special 301 Report. We appreciate the opportunity to have presented testimony and thank USTR for its thoughtful engagement and questions, which will help inform the review process. This process seeks to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons relying on IP protections.

ACT is a global policy trade association representing small and mid-sized technology developer businesses. The ecosystem we represent is responsible for 6.1 million American jobs and is valued at approximately $1.8 trillion.

The global digital economy holds great promise for small app development companies, but our members face a diverse array of trade barriers when entering new markets. While these barriers take different forms, they all have the same net effect: they impede U.S. exports and investment at the expense of American workers.

Infringement of IPR (including copyrights, trademarks, patents, and trade secrets) presents a major threat to the success of our members, their consumers, and the workforce that supports the creation and growth of digital products and services. Each kind of IP represents distinct utilities upon which ACT members depend. These violations lead to customer data loss, interruption of service, revenue loss, and reputational damage – each alone is a potential "end-of-life" occurrence for a small app development company.

During the hearing, USTR posed specific questions regarding our members' experiences in key jurisdictions. We appreciate the opportunity to provide additional context and elaboration on those issues below.

I. India and Treaty Obligations

ACT members continue to experience IP infringement originating from India, and face challenges in enforcement through the Indian system. India has not yet implemented several key obligations under the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), collectively known as the WIPO Internet Treaties. The most significant failure is the absence of adequate legal protection for Technological Protection Measures (TPMs) and Rights Management Information (RMI). Article 11 of the WCT and Article 18 of the WPPT require member countries to provide legal remedies against the circumvention of effective technological measures (like encryption or copy controls) used by rights holders. India's current Copyright Act, specifically Section 65A, is deficient as it does not clearly define "effective technological measures" to cover both access and copy controls, nor does it expressly prohibit the manufacturing, importation, or trafficking of circumvention devices and services. The legal provisions also lack deterrent-level civil and criminal penalties for both TPM circumvention and the unauthorized removal of RMI, falling short of the "effective legal remedies" mandated by the treaties.

Another critical area of non-compliance concerns the legal framework for online service providers. India must codify legal mechanisms to ensure Internet Service Providers (ISPs) can effectively cooperate with rights holders to remove infringing content. While the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (2021 IT Rules) provide a notice-and-takedown mechanism, its 36-hour deadline for removal is considered too slow to combat online piracy effectively, particularly for pre-release content. Furthermore, Section 52(1)(c) of the Copyright Act, which provides a safe harbor for intermediaries, is problematic. It currently requires rights holders to obtain a court order to prevent infringing content from being reinstated after a takedown notice, a burden that contradicts the treaty's requirement for expeditious remedies to prevent infringement. The report recommends amending this provision to align with international best practices by requiring expeditious removal upon notification without the need for a court order in all instances.

Beyond these specific treaty obligations, we have concerns about a recent government working paper proposing a statutory license and mandatory collective management for the use of copyrighted works to train AI models. The working paper from India's Department for Promotion of Industry and Internal Trade (DPIIT) proposing a mandatory statutory license and centralized collective management for the use of copyrighted works in AI training represents a deeply concerning and premature policy intervention that would undermine India's copyright framework. This proposal would improperly displace the case-by-case legal analysis that copyright law is designed to accommodate by presuming that all AI training is compensable conduct, regardless of whether the use is transformative or commercially harmful. The creation of a centralized Copyright Royalties Collective for AI Training (CRCAT) would concentrate significant market power in a single intermediary, raising serious concerns about rate-setting transparency and creating fixed compliance costs that disproportionately burden small and medium-sized innovators. Furthermore, this approach would improperly shift the burden of proof for copyright infringement, potentially requiring AI developers to demonstrate non-use of protected material, a technically infeasible obligation given how generative systems operate through probabilistic mechanisms. If implemented, this framework would favor large incumbents, reduce competitive pressure in AI development, and create long-term market distortions that are inconsistent with India's obligations to provide effective protection and enforcement of copyright under international agreements.

II. Anti-Suit Injunctions and Impact on U.S. Stakeholders

An anti-suit injunction (ASI) is a court order that blocks a party from pursuing litigation in another country's courts.

A blanket condemnation of ASIs would be detrimental to U.S. companies, consumers, and broader national interests. As a procedural instrument, ASIs are properly exercised to preserve a court's jurisdiction by prohibiting a party from pursuing parallel foreign proceedings on the same dispute, a long-standing practice of U.S. courts, including in SEP cases such as *Microsoft v. Motorola*.[1] In that case, a U.S. district court issued an ASI to stop Motorola from enjoining Microsoft from selling its allegedly infringing products in Germany. On appeal, the Ninth Circuit affirmed the ASI and established a balanced framework for courts to assess whether an ASI is appropriate. Under this framework, courts weigh several factors, including the effect of foreign litigation on U.S. courts' jurisdiction over U.S. patents, as well as the ASI's potential impact on respect for the foreign country's laws and judicial proceedings. The ASI was narrowly tailored to stop Motorola from enforcing the injunctive relief it may receive from the German court; it did not stop Motorola from pursing German patent claims in the German court.

A. China

Unlike the U.S. approach, which evaluates ASIs on a case-by-case basis under a carefully balanced legal test, limiting ASIs to preserving jurisdiction over domestic proceedings, Chinese courts have deployed them aggressively and much more broadly in scope to halt foreign litigation and preempt foreign court decisions on the same patents. The WTO dispute DS611 centered on China's "ASI policy."[2] In 2025, the final arbitration award found that this policy, which manifested in cases like *Huawei v. Conversant*[3] and *Xiaomi v. InterDigital*,[4] was inconsistent with China's TRIPS obligations (specifically Articles 28.1 and 28.2). The arbitrators held that China's practice of issuing broad ASIs, coupled with its practice of determining global rates, effectively deprived SEP holders of the practical ability to enforce their patent rights in

[1] 696 F.3d 872 (9th Cir. 2012).
[2] *China – Enforcement of Intellectual Property Rights*, WT/DS611/ARB25 (July 21, 2025).
[3] *Huawei Technologies Co. Ltd. et al. v. Conversant Wireless Licensing SÀRL*, 2019 Zui Gao Fa Zhi Min Zhong No. 732, 733, 734 (Sup. People's Ct. Aug. 28, 2020).
[4] Xiaomi Tongxun Jishu Youxian Gongsi Deng Su Jiaohu Shuzi Jishu Gongsi Deng (小米通讯技术有限公司诉交互数字技术公司等) [Xiaomi Communication Technology Co., Ltd. et al. v. InterDigital, Inc. et al.] (Wuhan Interm. People's Ct. 2020) (China).

other jurisdictions under TRIPS. In practical terms, this meant that a patent holder who had obtained a ruling on infringement or a license in the U.S. could be barred by a Chinese court from enforcing that very ruling, undermining the judicial sovereignty of the United States. While the WTO found no per se violation regarding the availability of ASIs (TRIPS Article 44.1), the ruling underscores that ASIs can cross a line from procedural tool to substantive interference with rights.

The recent issuance of ASIs by Chinese courts can be understood, in part, as a response to *Unwired Planet v. Huawei*,[5] where the UK High Court of Justice issued injunctions conditioned on defendants accepting global portfolio licenses set by the UK court. Chinese courts have seized on this precedent to justify their own jurisdictional assertions, framing their approach as a reciprocal countermeasure. However, China's approach is readily distinguishable from the UK's practice of granting interim licenses and exercising jurisdiction to set FRAND rates at the request of licensees.

First, the arbitrators in DS611 explicitly distinguished the circumstances that the UK court confronted in *Panasonic,*[6] involving a SEP holder failing to abide by its obligation to negotiate in good faith, from China's ASI regime. They first observed that there could be "a circumstance in which the issuance of an ASI would not necessarily infringe the SEP holder's 'right … to conclude licensing contracts' for the very reason that the SEP holder has conditioned the exercise of its right on engaging in good faith negotiations but – per China's scenario – has itself failed to fulfil that condition."[7] The arbitrators went on to explain: "We thus disagree with China that there is an inherent indeterminacy in respect of which ASIs may violate with Article 28.2, and which may not."[8]

They also explained that China's ASI regime acted without regard for whether the SEP holder had fulfilled its obligation to negotiate in good faith:

> In the present case … the key point is that such intervention should not frustrate the central condition on which the SEP holder waived its right not to offer a licence through its irrevocable FRAND undertaking, namely that SEP implementers and SEP holders engage in good faith negotiations over FRAND terms. By contrast, under the ASI policy, an ASI can be obtained at the request of a SEP implementer without any inquiry into the SEP holder's ability to exercise the "right … to conclude licensing contracts" in light of the FRAND undertaking made in respect of that "right".[9]

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[5] *Unwired Planet v. Huawei,* [2017] EWHC 711 (Pat) (Apr. 5, 2017).
[6] The same was true in *Lenovo v. Ericsson*, where the Corut of Appeal granted an interim license after concluding that "Ericsson are in breach of their obligation of good faith" because it was attempting to use foreign injunctions "coerce Lenovo into accepting terms more favourable to Ericsson than the English courts would determine to be FRAND, or at the very least to avoid the risk that the English courts would determine that FRAND terms are less advantageous to Ericsson than those sought by Ericsson." *Id*. ¶¶ 128-29.
[7] DS611 at 4.160.
[8] *Id*.
[9] DS611 at 4.162.

Second, the arbitrators directly acknowledged that “[t]here is nothing inherently or necessarily incompatible between the intervention by a court to settle a dispute over FRAND terms and the obligation under Article 28.2 of the TRIPS Agreement, which protects a SEP holder’s ‘right … to conclude licensing contracts’ for a SEP held in the territory of a given Member.”[10]

The Chinese courts have also modeled their ASI practice on the U.S. framework but applied it differently. In cases such as *Samsung v. Ericsson*, Chinese courts have issued ASIs to protect domestic FRAND rate-setting proceedings, arguing this is analogous to the U.S. approach in *Microsoft v. Motorola*. The difference, however, lies in scope: the U.S. ASI protected a domestic rate-setting case from interference, while China's ASIs have been used to shut down entire foreign litigations, effectively dictating where and how global patent disputes must be resolved.

While this practice appears to have subsided recently, China’s ASI practices have raised issues for companies that manufacture products incorporating SEPs, particularly SMEs with limited legal resources that rely on predictable, transparent licensing frameworks to operate across multiple jurisdictions. This policy increases compliance costs for SMEs, and creates uncertainty for cross-border technology transactions, ultimately harming both SEP licensors and those who bring standardized technologies to market.

We encourage USTR to distinguish between the legitimate, narrow use of ASIs (as practiced in the U.S.) and their broad deployment that contravenes WTO rulings. Further, USTR should highlight that UK courts do not engage in comparable overreach.

B. Germany and the Unified Patent Court (UPC)

In addition to Chinese courts, ACT emphasizes that USTR’s concerns over the use of ASIs should also focus on the practices of German and UPC courts that have demonstrated a willingness to grant SEP injunctions even absent a showing by the SEP holder that it has complied with its voluntary but binding FRAND obligations. This approach effectively coerces licensees into accepting non-FRAND terms under the threat of an injunction, thus eliminating the ability of licensees to meaningfully challenge the enforcement of SEPs.

The Court of Justice of the European Union (CJEU) in its 2015 *Huawei v. ZTE*[11] decision held that seeking injunctions on FRAND-committed patents can harm competition and directed that “the proprietor of an SEP must comply with conditions which seek to ensure a fair balance between the interests concerned.”[12] In particular, the CJEU outlined a framework in which the SEP owner is obligated to make a FRAND

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[10] *Id*.

[11] Judgment, Case C-170/13, *Huawei Technologies Co. v. ZTE Corp*., EU:C:2015:477 (CJEU July 16, 2015), https://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=1&part=1&mode=lst&docid=165911&occ=first&dir=&cid=3858.

[12] *Id*. ¶ 55.

offer after an expression of interest by the licensee and the licensee is only required to make a counteroffer if it does not accept the SEP holder's initial proposal.[13] This framework is aimed at facilitating good-faith negotiations by describing a genuine dialogue between the parties on the patent merits and FRAND terms.

But German courts, and now the UPC, have not followed this ruling and instead have adopted a practice of granting injunctions without examining the SEP holder's conduct or whether it has even made a FRAND offer. Notably, the European Commission submitted an amicus brief to a Munich court in a SEP dispute, criticizing the German courts for failing to faithfully apply the precedential *Huawei v. ZTE* framework. As the EC explained, the approach of German courts reduced the burdens on SEP licensors while simultaneously imposing heightened obligations on licensees.[14]

The consequence of the German approach has been to incentivize SEP holders to forum-shop by pursuing their claims in Germany. According to one study, Germany accounted for 122 of the 171 litigations worldwide between 2010 and 2023 in which a SEP injunction was sought.[15] In those 122 German cases, injunctions were granted, at least partially, 90 times.[16] The potential cost of such injunctions is so high that it ensures that licensees have no rational choice but to accept the SEP holder's offer, no matter how unreasonable.[17] A study of the potential costs of German injunctions illustrates this risk for licensees. For instance, Ford faced an injunction and product recall obtained by IP Bridge from Regional Court in Munich that would have cost it 200 times the annual royalties sought by IP Bridge. This figure was based on (1) a projected €6.6 billion revenue loss for Ford in Germany and (2) supply chain disruption ranging from €812 million to €1.1b billion.[18] Further, the study estimated that the injunction would have impacted 7,659 Ford employees.[19] Instead of bearing these astronomical costs, Ford had no choice but to accept the demanded royalty terms.[20] That outcome meant that Ford could not mount a meaningful challenge to the global portfolio of patents it was forced to license, a consequence triggered solely by a finding of infringement of a single German patent for 4G wireless technology. Crucially, a licensee like Ford has not,

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[13] *Id*. ¶¶ 61, 63, 65.
[14] *HMD Globy Oy v. VoiceAge EVS GmbH & Co. KG*, Oberlandesgericht München, 6 U 3824/22 (Apr. 15, 2024), German version available at https://competition-policy.ec.europa.eu/document/download/66e0bd63-36da-4b27-9eef-70602a8c7be2_en?filename=2024_Amicus_Curiae_6U3824_22Kart_de.pdf.
[15] John Hayes & Assaf Zimring, *Injunctions in Litigation Involving SEPs*, GRUR Patent 6/2024, https://media.crai.com/wp-content/uploads/2024/07/02154935/Hayes-Zimring_GRUR-Patent-2024-240-245_.pdf.
[16] *Id*.
[17] The UPC's first FRAND injunction granted by a panel in Mannheim in *Panasonic Holdings Corp. v. Guangdong OPPO Mobile Telecommunications Corp., Ltd., OROPE Germany GmbH*, Case No. UPC_CFI_210/2023; ACT_545551/2023 (Local Division Mannheim Nov. 22, 2024) rejected application of the EC's amicus brief on Huawei v. ZTE. That decision sends a strong signal of an intent to mimic the German approach to SEP injunctions.
[18] Hendrik Fügemann et al, *Economic Impact Assessment of Automatic Injunctions, Microeconomic Study 1: Economic Impact of an Injunction on a Company's Financial Position* 2-3, Copenhagen Economics (Dec. 17, 2024).
[19] *Id*. at 3.
[20] *Id*. at 2.

unlike a SEP holder, voluntarily committed itself to FRAND licensing and thereby constrained its own rights.

The imposition of a global license under such duress raises concerns about respect for the territoriality of patents and the preservation of a defendant's right to mount a meaningful defense and challenge to patents asserted against it. Those are critical animating concerns of the TRIPS Agreement and, more generally, of avoiding barriers to trade. For example, Article 1.1 of the TRIPS Agreement delegates responsibility to implement the agreement, noting that countries are "free to determine the appropriate method of implementing" their obligations "within their own legal system and practice." The German/UPC practice of coercing global settlements infringes upon other nations' freedom to implement and adjudicate their own patent laws. Further, Article 41(1) provides that enforcement procedures "shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse." Moreover, Article 41(2) requires that enforcement procedures "shall be fair and equitable." The German and UPC approach in issuing injunctions in SEP litigation does not meet those criteria.

More recently, these courts have begun issuing ASIs prohibiting parties from enforcing their contractual rights in other jurisdictions. In late September 2025, the Munich Regional Court and the UPC issued aggressive orders barring Amazon from seeking interim contractual remedies during the pendency of a rate-setting action in the United Kingdom with InterDigital.[21] These orders were based purely on hypothetical concerns: there was no case pending between the parties in the relevant courts and Amazon had not sought any interim remedies. This judicial overreach has even extended to private governance bodies, as seen when the Munich court enjoined Samsung from maintaining a complaint at the European Telecommunications Standards Institute (ETSI) against ZTE, a Chinese entity on the U.S. watch list, out of concern that the complaint could deter ZTE from pursuing patent litigation in Germany.[22] We also note that the Court of Justice of the European Union has enabled courts in EU member states like Germany to exercise jurisdiction over patent infringement claims involving third-country patents, including US patents, in the recent *BSH v Electrolux* decision.[23]

Troublingly, these decisions have no limiting principle and could equally be used to limit the enforcement of any contractual provision that the courts see as potentially depriving them of jurisdiction, such as arbitration agreements or forum selection clauses. By enjoining the enforcement of contracts that are not even governed by German law, these courts are undermining legal rights beyond their borders. There is a fundamental distinction between a court declining to enforce specific terms of a global contract and a court preemptively blocking a foreign tribunal from even considering those terms.

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[21] *See* UPC (LD Mannheim), 30 September 2025 – UPC CFI 936/2025, GRUR-RS 2025, 31129 – InterDigital VC Holdings, Inc./Amazon.com Inc; Regional Court of Munich (LG München I) Fundstelle (InterDigital VC Holdings, Inc. v. Amazon.com Inc., 21 O 12112/25).
[22] Regional Court Munich (Landgericht München I) Fundstelle (Samsung Electronics Co., Ltd v ZTE Corporation, Aktenzeichen).
[23] BSH Hausgeräte GmbH v. Electrolux AB, Case C-339/22 (CJEU Grand Chamber, Feb. 25, 2025).

This practice effectively transforms patent law into a barrier to legitimate trade, an outcome prohibited by the TRIPS Agreement. It is also unreasonable within the meaning of Section 301 of the Trade Act of 1974, as German courts are effectively conditioning access to the German market on the abandonment of the right to exercise rights pertaining to a global contract in foreign jurisdictions.

The actions taken by the UPC and German courts to limit contract enforcement in the UK are entirely unjustified, given that the UK proceedings are consistent with the TRIPS Agreement and international trade norms. UK courts have correctly recognized that when SEP holders voluntarily commit to license their SEPs on FRAND terms, they enter a binding contractual commitment. Licensees, as third-party beneficiaries of that commitment, can hold SEP holders to their FRAND commitment, which curtails the ability of SEP holders to seek injunctions. For example, in *Panasonic Holdings Corporation v. Xiaomi Technology UK Limited*, the English Court of Appeal explained the difference between SEPs subject to a FRAND commitment and other types of patents, nothing that this distinction means a "SEP holder's remedy is a financial one":

> Normal patents are monopoly rights, and the primary remedy for infringement is an exclusionary injunction so as to preserve the monopoly. This is not true of SEPs, because they are subject to the SEP holder's obligation to grant licences to any implementer who desires a licence on FRAND terms. An implementer is entitled to such a licence as of right. Thus SEPs are not property rights of the same status as other patents. In effect, the SEP regime is a liability regime in which the SEP holder's remedy is a financial one. The only role for an injunction in this regime is to enforce the SEP holder's entitlement to that financial remedy.[24]

Consequently, based on Panasonic's binding FRAND commitments, the court concluded that it "is certain that Xiaomi will soon be licensed on terms that the Patents Court has determined are FRAND."[25] Nonetheless, Panasonic had continued to seek foreign SEP injunctions against Xiaomi, a tactic that the court recognized was intended to pressure Xiaomi into accepting worse terms than a UK court would award. The court described this tactic as "indefensible" and a breach of Panasonic's obligation to negotiate in "good faith."[26] This led the court to conclude that it would serve a "useful purpose" to issue a declaration that a "willing licensor in the position of the [Panasonic] would agree to enter into, and would enter into, an interim licence" with Xiaomi.[27] Principally, the court concluded that a finding that "Panasonic is in breach of its obligation of good faith and a formal declaration that a willing licensor would enter into an interim licence" might cause Panasonic to reconsider its conduct.

Notably, the Court of Appeal distinguished the relief granted to Xiaomi, a declaration regarding an interim license, from an anti-suit injunction, observing that "[i]f the

[24] [2024] EWCA Civ 1143 ¶ 79.
[25] *Id*. ¶ 81.
[26] *Id*. ¶¶ 82-86.
[27] *Id*. ¶¶ 1, 90

declarations sought by Xiaomi are granted, they will not prevent Panasonic from pursuing the German Proceedings."[28] Further, the court was fully aware of the territorial limitations on patents, observing that "it is generally accepted that, even if they have jurisdiction over the parties because of e.g. domicile, the courts of state A are not competent to adjudicate upon a claim for infringement of a patent granted by state B at least if the validity of that patent is in issue."[29] But, because its determination was based on contract, that territorial limitation was not applicable. In a subsequent decision, the English Court of Appeal extended its holding from *Panasonic*, where Panasonic had initiated the UK action as the SEP holder. The court concluded that Amazon could likewise obtain a declaration regarding an interim license against Nokia in an action Amazon initiated as the licensee.[30]

Unlike the German and UPC approaches, the UK's approach to issuing declarations regarding interim licenses and exercising jurisdiction to determine global FRAND license terms at the request of licensees raises no concerns under TRIPS.

Arguments regarding SEP adjudication interfering with SEP holders' rights in violation of TRIPS have tended to focus on Articles 28.1 and 28.2. Article 28.1 provides that a "patent shall confer on its owner the exclusive rights" to "prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes" a product covered by the patent or a product obtained by a patented process. Article 28.2 provides that "[p]atent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts." The argument against UK courts making interim declarations and issuing FRAND determinations at the request of licensees posits that such actions interfere with the SEP holder's right to prevent the use of its SEPs or to license them as it chooses.

But, as the *Panasonic* court explained, a declaration of what license terms for a willing licensor would be (or even the determination of actual interim license terms) does not prohibit assertion of patents in other jurisdictions. Further, even if an interim license gives rise to a potential defense to an infringement claim in a court outside of the UK, the UK court has still not prevented the SEP holder from pursuing relief abroad. Instead, the UK court has only provided the defendant with a *potential* defense, the efficacy of which the foreign court remains free to consider under its own laws. Critically, this defense arises from the SEP holder's own voluntary decision to commit to licensing its SEPs on FRAND terms. The UK court is thus not depriving a SEP holder of a right; it is merely enforcing a commitment that the SEP holder already made, relinquishing the right to obtain exclusionary rights where FRAND royalties are available.

[28] *Id*. ¶ 67.
[29] *Id*. ¶ 9 (citing Articles 24(4) and 27 of European Parliament and Council Regulation 1215/2012/EU of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
(recast)).
[30] *Alcatel Lucent SAS v. Amazon Digital UK Ltd.*, [2025] EWCA Civ 43.'

For the same reasons, ordering a binding global FRAND license does not strip SEP holders of their rights to enforce their patents or obligate them to license against their will. Although a concluded global license would preclude a claim for infringement outside the UK, again, the SEP holder has agreed to forego such a claim when it can obtain FRAND royalties. As the English Court of Appeal put it: “the whole point of a SEP owner’s obligation to ETSI is that it is a derogation from the patentee’s normal entitlement to enforce its patent by means of an injunction.”[31] Likewise, obligating a SEP holder to grant a license on FRAND terms, after it has had an opportunity to present its own case on what those terms should be, is in keeping with the commitment that it voluntarily made. Accordingly, there is no deprivation of rights beyond what the SEP holder itself volunteered to do by committing to license on FRAND terms.

The German and UPC approach to SEP injunctions disproportionately harms U.S. implementers and small and medium-sized enterprises (SMEs) that lack the resources to litigate across multiple forums or absorb the staggering costs of an injunction. For these stakeholders, the threat of an injunction is not a bargaining tool but an existential threat. As the Ford example illustrates, even a large company faces ruinous consequences, billions in lost revenue, supply chain disruption, and job losses, when confronted with a German injunction, leaving no rational choice but to accept non-FRAND terms.

For SMEs, the calculus is even more dire: a single injunction can force a company out of business entirely, not because its products infringe valid patents, but because it cannot afford to litigate the FRAND-ness of the offer or challenge patent validity in a system that presumes both. This dynamic effectively denies U.S. implementers their day in court, stripping them of the ability to mount a meaningful defense and transforming what should be a good-faith licensing negotiation into a coercive extraction of rents. Moreover, by forcing implementers to accept global licenses under duress based on infringement of a single German patent, these courts undermine the territoriality of patent rights and deprive U.S. companies of the opportunity to challenge patent validity, essentiality, or FRAND compliance in their home courts or other appropriate forums, rights that are fundamental to a balanced intellectual property system.

In light of these harms, ACT urges USTR to address the German and UPC practices in its Special 301 Report as unreasonable and discriminatory trade practices that burden U.S. commerce. First, USTR should document how these courts' systematic grant of SEP injunctions without meaningful FRAND inquiry violates the spirit, if not the letter, of the TRIPS Agreement's requirements that enforcement procedures be fair and equitable and avoid creating barriers to legitimate trade.

Second, USTR should highlight the recent escalation in which German and UPC courts have begun issuing orders that bar U.S. companies from enforcing contractual rights, including arbitration agreements and forum selection clauses, in foreign jurisdictions, based on purely hypothetical concerns about jurisdiction. This judicial overreach, which

[31] *Lenovo Group Ltd. v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182 ¶ 129.

has no limiting principle, undermines the sanctity of contracts and could equally be used to nullify any agreement that a court perceives as threatening its ability to hear a case.

Third, USTR should engage with the European Commission and EU member states to urge alignment with the CJEU's Huawei framework and restore balance to SEP enforcement.

Finally, USTR's Special 301 Report should draw a clear and principled distinction between the practices of German, UPC, and Chinese courts, on the one hand, and those of U.S. and UK courts, on the other. While German, UPC, and Chinese courts have deployed injunctions and anti-suit injunctions as coercive tools, often with little regard for FRAND obligations or the territoriality of patent rights, U.S. and UK courts have applied these instruments narrowly and with deference to international comity.

The goal is not to prevent patent holders from obtaining reasonable royalties, but to ensure that U.S. implementers, particularly SMEs, can compete in global markets without facing coercive tactics that violate international trade norms and fundamental fairness.

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ACT appreciates the opportunity to provide its views. We urge USTR to reflect these concerns in the 2026 Special 301 Report and look forward to continued engagement as you evaluate these troubling practices. America’s small business innovators depend on a global system where FRAND commitments are enforced, not exploited. We stand ready to assist USTR in any way we can to advance that goal. Thank you.

Thank you.