

October 24, 2025

The Honorable Amy A. Karpel
Chairwoman
U.S. International Trade Commission
500 E Street, SW
Washington, District of Columbia 20436

Re: *Comments of ACT | The App Association on the 2026-2030 USITC Draft Strategic Plan*

Dear Chairwoman Karpel:

ACT | The App Association appreciates the opportunity to respond to the U.S. International Trade Commission's (USITC) Draft Strategic Plan for Fiscal Years 2026-2030.¹

The App Association is a not-for-profit trade association representing the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers located across the United States that compete across consumer and enterprise markets. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build groundbreaking technology.

The domestic ecosystem we represent—which we call the app economy—is valued at approximately \$1.8 trillion and is responsible for 6.1 million American jobs.² Our members are key drivers of a broader U.S. digital economy that, on its own, is the world's eighth largest economy. Our members develop and leverage patented technology to innovate and compete across sectors and use cases, driving the growth of the internet of things (IoT).³

We commend the USITC's commitment to its mission, as outlined in the draft Plan, to “assess[] and address[] unfair imports and other trade practices that injure U.S. industries” and to “provide[] information and analysis of international trade and competitiveness issues.”⁴ Our

¹ USITC, Draft Strategic Plan for FY 2026-2030 (Sept. 25, 2025), https://www.usitc.gov/documents/usitc_strategic_plan_2026-2030-draft.pdf [hereinafter *USITC Draft Strategic Plan*].

² ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf>.

³ Similar to 5G, IoT will involve everyday products that use the internet to communicate data collected through sensors. IoT is expected to enable improved efficiencies in processes, products, and services across every sector. In key segments of the U.S. economy, from agriculture to retail to healthcare and others, the rise of IoT is demonstrating efficiencies unheard of even a few years ago. See, e.g., Department of Commerce Internet Policy Task Force and Digital Leadership Team, *Fostering the Advancement of the Internet of Things* (Jan. 2017), available at https://www.ntia.doc.gov/files/ntia/publications/iot_green_paper_01122017.pdf.

⁴ *USITC Draft Strategic Plan* at 4.

members' ability to grow and create American jobs is directly impacted by the global trade landscape, including unfair import practices that undermine their intellectual property and market access.

We offer the following suggestions, which are aligned with the USITC's strategic goals to investigate and inform, to ensure the Commission's work effectively supports American small business innovators:

Ensure Full Enforcement of the Domestic Industry Requirement by Requiring Demonstrable, Substantive Domestic Activity

USITC should more strictly enforce its domestic industry requirement to prevent entities from engaging in gamesmanship and exploiting the system when such activities most acutely harm American small businesses. Currently, the domestic industry requirement under Section 337 mandates that complainants show significant domestic investments in plant, equipment, labor, capital, or research and development related to the patented product; however, ambiguities and lenient interpretations have allowed patent assertion entities (PAEs), including non-practicing entities (NPEs), to satisfy this requirement through minimal licensing or surface-level domestic activities without actual innovation, manufacturing of products, or substantively contributing to the U.S. economy.

To protect genuine American small business innovators, USITC should require demonstrable, substantive domestic activity rather than permitting claims based solely on licensing or passive economic presence. Such an approach will ensure that USITC focuses on defending true domestic industry interests and prevents abuse by entities using Section 337 cases as litigation tools.

Ensure Transparency in Proceedings by Requiring Disclosure of Third-Party Litigation Funding

For small businesses, third-party litigation funding creates an uneven and unpredictable playing field. When a small company defends itself in response to a Section 337 complaint against it (often filed in parallel with a lawsuit in federal district court addressing the same alleged infringement), it faces immense pressure to settle early, regardless of the case's merits, simply to avoid the existential cost of litigation.

USITC should be concerned about unknown foreign entities clandestinely funding litigation abuse, including in the context of Section 337 complaints. This directly undermines the USITC's strategic objective of conducting "transparent proceedings."⁵

To protect small businesses and ensure a fair process, we recommend the Commission require patent holders to disclose any non-party entity that provides funding in exchange for a financial interest in a Section 337 case outcome (as well as parallel cases filed in federal district courts).

⁵ USITC Draft Strategic Plan at 5.

Such disclosures are essential for small businesses to understand the forces arrayed against them and for the Commission to safeguard the integrity of its proceedings.

Apply a Public Interest Analysis in Section 337 Investigations that Appreciates the Voluntary Fair, Reasonable, and Non-Discriminatory (FRAND) Commitment Attached to Standard-Essential Patents (SEPs)

Small businesses driving the IoT revolution are uniquely vulnerable to the abusive practice of patent hold-up in the SEP landscape – when a SEP holder disregards its voluntarily-made commitment to FRAND licensing and instead abuses its dominant position to exploit good faith innovators utilizing standards. Unlike large corporations, our members lack the financial reserves to weather a protracted legal battle or the leverage to negotiate against the threat of an exclusion order that could wipe out their entire product line.

Bad actors exploit this power imbalance through Section 337 cases. They acquire SEPs and renege on FRAND commitments, specifically targeting small businesses who have built products using technical standards. By threatening to seek, or seeking, an exclusion order from the USITC, these SEP holders can demand non-FRAND licensing terms that ultimately harm competition and consumers.

Therefore, it is critical that FRAND commitments receive full consideration in a USITC public interest analysis. The remedy of an exclusion order in cases involving FRAND-committed SEPs should be reserved for only the most extreme circumstances—specifically, when a potential licensee is “unable or refuses to take a FRAND license and is acting outside the scope of the patent holder’s commitment.”⁶

It is crucial to recognize that SEP holders denied an exclusion order are not left without recourse; they retain the full ability to pursue monetary damages through the federal court system.⁷ Indeed, a commitment to voluntary licensing on FRAND terms per a standard-setting organization’s (SSO) patent policy represents an agreement that monetary damages are in most cases the proper form of relief for infringement save for extreme exceptions.

⁶ Letter to the Honorable Irving A. Williamson, Chairman, USITC, re *Disapproval of the U.S. International Trade Commission’s Determination in the Matter of Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices and Tablet Computers*, Investigation No. 33-TA-794, (August 3, 2013) available at <https://ustr.gov/sites/default/files/08032013%20Letter1.PDF>.

⁷ Yi Yu & Smith R. Brittingham IV, *Why Recent ITC Rulings Are Good News for SEP Owners and the Commission*, WORLD INTELL. PROP. REV. (Apr. 15, 2025), <https://www.finnegan.com/en/insights/articles/why-recent-itc-rulings-are-good-news-for-sep-owners-and-the-commission.html>.

Continued Investigation of Trade-Related Barrier Reductions

USITC should continue and expand targeted investigations into trade-related barriers that disproportionately affect small businesses. Building on past investigations, USITC should identify trade barriers including tariffs, non-tariff measures, and procedural obstacles that challenge American small business competitiveness. USITC can use its investigatory authority to provide data-driven foundations for policy reforms to policymakers seeking to ease small business access to foreign markets.

The App Association stands ready to collaborate with USITC as it implements its Strategic Plan. By focusing on efficient and effective investigations, providing sound analysis on emerging challenges like SEP abuses, and applying a rigorous public interest analysis, the Commission can continue to protect U.S. industries, foster innovation, and bolster the success of American small businesses in the global marketplace.

Sincerely,



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