



June 21, 2024

The Honorable Marisa Lago  
Under Secretary of Commerce for International Trade  
International Trade Administration  
1401 Constitution Avenue NW  
Washington, District of Columbia 20230

RE: *Commerce Supply Chain Risk Assessment and IPEF Supply Chains*

Dear Ms. Lago,

The undersigned organizations represent a wide range of companies and organizations that span multiple industry sectors, including telecommunications, automotive, semiconductor, modules, cloud, and network infrastructure, representing a comprehensive cross-section of companies that do business in the United States, from public to private, as well as small, medium, and large. We collectively invest hundreds of billions of dollars annually in R&D and are responsible for tens of millions of U.S. jobs. Without exception, we rely on resilient supply chains regardless of the industry or industries we innovate in and across the economy. We write to request the International Trade Administration's (ITA's) focus on well-documented and persistent standard essential patent (SEP) licensing abuses that are upending supply chains across key sectors, which ITA can should address trade negotiations, enforcement, and other initiatives.<sup>1</sup>

It is now well known that certain SEP holders systematically leverage their dominant position in controlling the ability to use technical interoperability standards in order to force unreasonable terms and excessive royalty rates despite their voluntary commitments to provide fair, reasonable, and non-discriminatory (FRAND) licenses. These opportunistic SEP holders routinely refuse to license to certain upstream entities in the supply chain, while instead insisting on licensing to downstream entities, such as end product manufacturers (e.g., original equipment manufacturers (OEMs)), from whom they believe they can extract more money even from SEP-unrelated features of the implementing product. Further, the damage to supply chains from abusive SEP licensor practices is amplified when carried out by patent pools that control access to many FRAND-committed SEPs.<sup>2</sup>

As a prime example, SEP licensing abuses are occurring in automotive supply chains where some SEP holders in foundational wireless communication standards refuse requests for FRAND licenses from reasonable and willing licensees, instead arbitrarily insisting on licenses from the end product (the vehicle) in order to extract unrelated value beyond the components that function from the SEP, leaving suppliers in supply chains unable to get enough license for their components and indemnify their customers against SEP infringement claims. The net result has been to introduce preventable uncertainties and disruptions to these supply chains, undercutting important safety and sustainability goals, as well as U.S. economic and national security interests.

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<sup>1</sup> 89 FR 16608.

<sup>2</sup> See *Continental Automotive Systems v. Avanci, LLC*, No. 20-11032 (5th Cir. 2022).

SEP licensor abuse-driven disruptions to supply chains are being perpetuated by foreign courts that have concluded that they can force a standards user to accept global FRAND terms on pain of a national injunction.<sup>3</sup> In such decisions, the global SEP licenses imposed on standards users often include patents issued outside the court's jurisdiction, including U.S. patents, for which validity and essentiality have not been assessed. The precedent set by such decisions forces U.S. businesses and their consumers to make, sell, or buy products in the United States based on foreign-set patent royalty rates.

ITA is strongly encouraged to address these disruptions to U.S. supply chains through bilateral and multilateral trade agreements, enforcement, and other policy measures. We welcome the opportunity to elaborate on our views above and our experiences, and to collaborate on ways to advance U.S. competitiveness writ large.

Sincerely,

ACT | The App Association

Allied For Startups

Computer & Communications Industry Association

Engine

High-Tech Inventors Alliance

TechNet

Save Our Standards

cc: Sharon H Yuan, Counselor and Chief Negotiator for IPEF, ITA  
Kevin Doyle, Policy Advisor for IPEF, ITA  
Ahmad Khalil, Managing Director, Risk Assessment and Advanced Analytics, Supply Chain Center, ITA

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<sup>3</sup> See *Unwired Planet International Ltd v. Huawei Technologies Co. Ltd* (SCUK 2020); see *Sisvel v Haier*, Federal Court of Justice, judgment dated 5 May 2020, Case No. KZR 36/17; see *Koninklijke Philips N.V. v. Wiko SAS*, Court of Appeal of The Hague, judgement dated 2 July 2019, Case No. C/09/511922/HA ZA 16-623.



**ACT | The App Association**

ACT | The App Association (“App Association”) is a global policy trade association for the small business technology developer community. Our members are entrepreneurs, innovators, and independent developers within the app ecosystem that engage with verticals across every industry. Through its All Things FRAND initiative, the App Association works to preserve and promote innovation generally, as well as to accelerate the growth of technology markets through robust standards development and a balanced intellectual property system. Visit: <http://www.actonline.org/>.



**Allied For Startups**

Allied for Startups is a worldwide network of advocacy organisations in 5 continents focused on improving the policy environment for startups. We are working together to create a consensus on policies that can positively impact startups and grow digital entrepreneurship and the digital economy at large. Our mission is to ensure that the voices of startups are heard in government. Visit: <https://alliedforstartups.org/>



**Computer and  
Communications Industry  
Association**

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. Visit: <https://www.saveourstandards.com/>



**Engine**

Engine is a 501(c)(3)/(4) non-profit organization that works with thousands of startups across the country to advocate for pro-startup, pro-entrepreneurship policy. The vast majority of these startups can't afford lobbyists or a trade association, but their voice should be front and center as policymakers think about innovation, Internet, and technology policy. Visit: <https://www.engine.is/>



The High-Tech Inventors Alliance (HTIA) advocates for balanced reforms in the Patent and Trademark Office, the courts, and Congress that address the root causes of these problems while advancing a patent system that promotes investment in new technologies and American jobs. We collectively invested over \$146 billion in research and development last year, hold nearly 350,000 U.S. assets and support tens of millions of jobs created as a result of the innovative goods and services our members provide. Visit: <https://www.hightechinventors.com/>

### High-Tech Inventors Alliance



### Save Our Standards

Save Our Standards is a broad-based coalition of innovators, small businesses, associations, academics, and consumer groups dedicated to reinforcing the FRAND licensing commitment and its important role in technical standards to enable competition and innovation that directly benefits consumers. We work to educate decision-makers and stakeholders on policies that allow all innovators to thrive through pro-competitive practices and the reinforcement of fair, reasonable and non-discriminatory licensing terms for standard-essential patents.

Visit: <https://www.saveourstandards.com/>



### TechNet

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. Our membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.4 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

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