

STANDARD-ESSENTIAL PATENTS (SEPS)



THE ISSUE:

The United States is home to a huge array of talented and innovative small businesses that build on technical standards. This system has worked for years, encouraging interoperability and innovation. But a handful of abusive patent holders are hijacking standard-essential patent (SEP) licensing practices, creating a barrier to innovation and economic growth. Technical standards establish guidelines, specifications, or characteristics for products, services, and processes. They provide common protocols that serve as a baseline for products to interoperate. As part of this, companies often voluntarily contribute patents to a standard—referred to as SEPs. These patents are truly essential to use the standard and have traditionally been available to any willing licensee on fair, reasonable and non-discriminatory (FRAND) terms.

WHY IT MATTERS TO SMALL BUSINESSES IN THE APP ECONOMY:

Trusted standards-setting organizations (SSOs) convene stakeholders from around the ecosystem to develop these standards, which promote interoperability between products and services and address end user safety. Because standards have this role as a baseline to innovation, small businesses often need to utilize them to compete in the market. Additionally, this interoperability allows small businesses to focus on what they do best rather than having to build an entire stack of solutions for every product.

ANTITRUST LAW SAFEGUARDS INNOVATION:

Holding a patent that is essential to a standard's use confers significant market power on a SEP holder. Recognizing this, SSOs have introduced requirements for SEP holders to commit to license those standards to all on FRAND terms to mitigate the potential to abuse their market power and prevent SEP holders from excluding or gouging innovators that need to use standards. Without FRAND constraints, experience has shown that some SEP holders will reduce the quality and quantity of their end products and services. In short, FRAND promises are an important check on anticompetitive abuse, and ignoring them can constrain competition in a way that harms competitors and consumers, which antitrust law generally prohibits.

SEP abuses pose a significant threat to competition across every key market in the world. With the United States as a leader, we need to prevent abusive SEP owners from routinely violating their voluntary commitments to license SEPs on FRAND terms.

The FRAND commitment is central to facilitating technological progress in both established (automotive, telecommunications, etc.) as well as newer markets (internet of things, smart wearables, precision agriculture, green technology, audio and video streaming, etc.). That's why industry players large and small, from automotive manufacturers and suppliers to retailers, have joined the App Association in advocating for appropriate enforcement to ensure compliance with FRAND principles. Standards, which will play an important role in the development of next-generation networks and the internet of things, will only remain strong if the U.S. standards ecosystem appropriately recognizes the importance of FRAND.



PROTECTING U.S. COMPETITIVENESS AND NATIONAL SECURITY:

U.S. competitiveness and national security hinge on the ability to protect American businesses from SEP abuses and ensure diverse supply chains. SEP abuses put the nation at greater risk by enabling foreign licensors to abuse their dominant positions as SEP holders and weaken U.S. supply chains by forcing American businesses to rely on fewer suppliers of critical components. China has a demonstrated track record of buying up large volumes of SEPs and engaging in anticompetitive SEP licensing practices that have and will continue to force out Western suppliers if U.S. enforcers fail to stop them. Support for well-established SEP law and policy principles that make sure SEP holders stick to their FRAND promises is needed to maintain U.S. leadership in standards and to prevent abuses by foreign competitors.

WHAT POLICYMAKERS CAN DO:

- **Promote innovation on standardized foundations by implementing national mechanisms to support SSO-developed FRAND commitments and restrict harmful licensing tactics involving SEPs.**
- **Reinforce that violations of FRAND commitments pose negative implications for competition.**
- **Protect U.S. competitiveness and national security through standards participation and leadership that upholds principles that define the FRAND commitment.**