

# Standard-Essential Patents (SEPs)



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Debating whether to plug a phone into the computer or charge from the outlet? We have both the USB and the electrical outlet standards to thank for that choice. Away from Wi-Fi—another standard—and need to access email? One might hop on a 5G network—that’s yet another standard. Voluntary standards are the unsung heroes of innovation. In brief, standards are collections of specifications for items or processes that allow building projects to buy the right size of beam and car owners to replace specific parts instead of whole engines. Technical standards are the blueprint for interoperability.

## Innovators Compete on Top of Standards

Consensus-based technological standards fuel innovation. 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. As a technology standard develops within an SSO, participants voluntarily contribute their patented technology to be a part of the standard. A patent needed to practice a standard is generally considered “essential” to the standard (called a standard-essential patent, or SEP).

## 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 fair, reasonable, and non-discriminatory (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, an international consensus is needed to prevent 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 be vital to the development of next-generation networks and the internet of things, will only remain strong if the U.S. standards ecosystem balances the interests of those that work to build standards with those that utilize them to innovate.



## 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. 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.

### To Support the Growth and Potential of the Dynamic American Economy, We Urge Congress to:

- Promote standardized innovation 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.