

Technical Standards and Standard-Essential Patents (SEPs)



Discover the App Economy





Key Takeaways

- 1** Standard-essential patent (SEP) abuses pose a significant threat to small businesses like ACT | The App Association members, as well as consumers, across every key market in the world, hindering competition and innovation in the global app economy.
- 2** SEP abuses put the nation at greater risk by enabling foreign licensors to abuse their dominant positions as SEP holders and weaken our supply chains by forcing us to rely on fewer suppliers of critical components.
- 3** Congress should address these issues and stop SEP abuses, protecting U.S. competitiveness and national security in the ways outlined here.



Innovators Compete on Top of Standards

Consensus-based technological standards fuel innovation. Trusted standards-setting organizations (SSOs) develop these standards to promote interoperability between products and services as well as to ensure end user safety. Standards are in every connected device. Because standards have this role as a baseline to innovation, small businesses need to utilize them to compete in the market. As a technology standard develops within an SSO, participants voluntarily offer 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). In general, anyone using the standard needs to license SEPs in order to use the standards that contain them. Unfortunately, some SEP holders take advantage of this dynamic and abuse the standards system in a manner that puts all this innovation at risk.

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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 4G LTE network—that’s yet another standard. Standards are the unsung heroes of innovation. Much of technology’s cross-functionality depends on them. Many ACT | The App Association members manufacture connected devices that use wireless standards.

Antitrust Law Safeguards Innovation

Having a patent that is essential to a standard’s use confers significant market power on a SEP owner. 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 discipline their market power and prevent SEP owners from excluding or gouging innovators that need to use standards.

Without FRAND constraints, experience has shown that some SEP owners will harm competition and consumers by reducing the quality and quantity of 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 nascent markets (internet of things, smart wearables, 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 our supply chains by forcing us 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 are 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:

- Recognize the importance of FRAND commitments, including the restrictions SSOs place on harmful licensing tactics involving SEPs.
- Understand that violations of FRAND commitments pose negative implications for competition.
- Protect U.S. competitiveness and national security through standards leadership that upholds the FRAND commitment's meaning.