



April 2, 2024

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Secretary Raimondo,

We, the undersigned trade associations, represent companies of all sizes who are committed to the success of the U.S. economy. Our members include mainstream stakeholders in the U.S. economy, as well as small and medium-sized businesses, throughout diverse U.S. industries, including the automotive, telecommunications, consumer electronics, smart energy, and semiconductor sectors. Together, we invest hundreds of billions of dollars into research and development annually, employ millions of Americans, contribute trillions of dollars to the U.S. economy, and drive U.S. global competitiveness. We also hold and license countless patented technologies, and rely on a strong, fair, and predictable patent system to grow and create jobs. We write to urge you, in coordination with other key federal agencies, to support efforts to bring transparency, predictability, and fairness to the standard-essential patent (SEP) licensing ecosystem which profoundly influence our businesses and U.S.-based innovation.

Unfortunately, the current global licensing ecosystem for SEPs is opaque, unpredictable, and imbalanced. SEPs are patents included in voluntary technical standards developed collaboratively, often among competitors. The inclusion of patented technologies in a standard gives the owners of those patents significant market power, which is in turn balanced by the patent holders' voluntary commitments, as participants in the standard-setting process, to license their patents on fair, reasonable, and non-discriminatory (FRAND) terms to anyone needing licenses in order to use the standard. Unfortunately, some SEP holders misuse their market power by disregarding their FRAND licensing commitments, harming our companies, distorting the pro-competitive impact of standards and undermining the United States Government National Standards Strategy for Critical and Emerging Technology.¹

¹ <https://www.nist.gov/standardsgov/usg-nss>.

The imbalanced and unfair nature of today’s global SEP licensing ecosystem is particularly driven by conditions in the European Union (EU). As a prime example, certain courts in Europe readily issue injunctions in SEP disputes without assessing whether SEP holders’ demands are consistent with their promises to license their SEPs on FRAND terms, in contrast to the approach taken by U.S. courts.² Such approaches have exposed our member companies to intense litigation and uncertainties that undermine planning and investments, translating to wasted resources and lost opportunities for our businesses and those we serve while benefitting a small handful of primarily non-U.S. SEP licensors. Foreign injunctions also deny U.S. companies effective access to U.S. adjudication—improperly undermining the role of the U.S. patent system and the U.S. courts—because the economic cost of market exclusion is such that manufacturers are compelled to accept SEP holders’ non-FRAND licensing demands.

After years of consultation and the establishment of a strong evidence base showing systemic harms to competition and consumers, the EU has proposed a new SEP licensing regulation that could greatly benefit our members, including those benefitting from the CHIPS + Science Act, the Inflation Reduction Act, and the Infrastructure Investment and Jobs Act, by taking much-needed steps to improve transparency, predictability, and fairness for all parties involved in SEP licensing in the EU. The proposed SEP licensing regulation, if properly developed and implemented, will represent a significant improvement over the EU’s current framework and will better align the legal treatment of SEPs in the EU with the practices of U.S. courts.

We understand that a small number of special interests, including non-practicing entities, are characterizing the EU’s proposal as harmful to the U.S. patent system and damaging to U.S. competitiveness and innovation. Their effort is a meritless attempt to preserve their anticompetitive SEP licensing practices, and we urge the Department of Commerce to reject their unsubstantiated assertions. Our members include several of the top U.S. and EU patent holders who support a strong patent system.

As the proposed SEP regulation develops, we urge you to support the EU’s efforts to create a more transparent, predictable, and fair SEP licensing environment, or at minimum to maintain neutrality on the proposed SEP regulation. As the regulation develops, we welcome the opportunity to consult with you on its features and their expected impact. Both in and beyond the context of the EU’s proposed SEP regulation, we commit to partnering with you to advance a competitive, equitable, and inclusive environment that will support U.S. companies and workers.

² *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

Sincerely,

ACT | The App Association

Alliance for Automotive Innovation

Fair Standards Alliance

Software & Information Industry Association



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/>.



Alliance for Automotive Innovation

The Alliance for Automotive Innovation represents the manufacturers that produce most of the cars and light trucks sold in the United States, original equipment suppliers, battery makers, technology companies, and other value chain partners within the automotive ecosystem. Representing approximately 5 percent of the country’s GDP, responsible for supporting 10 million jobs, and driving \$1 trillion in annual economic growth, the automotive industry is the nation’s largest manufacturing sector.

Visit: www.autosinnovate.org.



Fair Standards Alliance

The FSA is an alliance of 46 US and global companies, large and small, that advocates for fairer licensing of standardized technology in the development and rollout of the IoT. FSA members significantly contribute to global innovation and the global economy. Annually, the aggregate turnover of FSA members is more than USD 2.6 trillion, and in aggregate our members spend more than USD 200 billion on R&D and innovation. Alliance members have more than 600,000 patents, including SEPs, that are either granted or pending.

Visit: <https://fair-standards.org/>.



Software & Information Industry Association (SIIA)

SIIA is an umbrella association representing more than 380 technology, data and media companies and associations globally. Industry leaders work through SIIA’s divisions to address issues and challenges that impact their industry segments with the goal of driving innovation and growth for the industry and each member company. This is accomplished through in-person and online business development opportunities, peer networking, corporate education, intellectual property protection and government relations.. Visit: <https://www.siaa.net/>.