

September 26, 2025

Howard Lutnick

Secretary of Commerce
United States Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Pam Bondi

Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Re: Potential harm to U.S. innovation from statement on patent injunctions

Dear Secretary Lutnick and AG Bondi,

We write to address the positions on patent injunctions that the Antitrust Division of the U.S. Department of Justice and the U.S. Patent & Trademark Office adopted in their Statement of Interest in the *Radian Memory Systems v. Samsung* case (E.D. Tex., No. 2:24-cv-01073-JRG). In recent speeches, Division and USPTO officials stated that these positions remain the policy of these organizations.

We support the Division's and USPTO's goal of promoting "consistent and correct application and enforcement of the intellectual property laws ... to safeguard patents, fuel economic growth, and spur innovation to advance American freedoms." The increased availability of patent injunctions advocated in the Statement of Interest, however, would have the opposite effect. It would harm American innovation, competition, and economic growth.

Save Our Standards is a broad-based coalition of innovators, small businesses, associations, academics, and consumer groups dedicated to reinforcing the voluntary 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.¹

Our members represent over \$100B annually in R&D spending across a range of industries, helping to fuel the American innovation economy. We own hundreds of thousands of patents, employ more than 50 million Americans and contribute trillions of dollars to the

¹ The consensus views expressed in this submission do not necessarily reflect the specific individual organizational positions of each member.

annual U.S. GDP. Many of our companies are headquartered in the U.S., and others have extensive U.S. operations. We include many small businesses. We request your support in continuing longstanding U.S. policy to promote U.S.-based innovation.

For almost two decades, the Supreme Court's *eBay* decision, 547 U.S. 388 (2006) (Thomas, J.), has fueled innovation by providing a predictable framework governing patent injunctions. Empirical research has found that since *eBay*, firms that are exposed to patent litigation risk, including from non-practicing entities (which buy patents to assert them against others), have increased their research and development investments.² The American economy has thrived under *eBay*.

The patent system has also flourished under *eBay*, and patent holders have had ample incentive and ability to enforce their intellectual property rights. The number of U.S. patents granted per year has more than doubled since *eBay*, and patent litigation and licensing revenue have both increased.³ And, critically, injunctions remain available for companies to stop competitors from using their patents.

Under *eBay*, the courts have recognized that where the dispute is ultimately about money, the patent owner is unlikely to be irreparably harmed. Accordingly, patent holders, such as non-practicing entities that generate revenue from broadly licensing their patents, are highly unlikely to be awarded injunctions. Revenue generation, not product differentiation, is the goal, and money damages make these patent owners whole.

The main position advanced in the Statement of Interest—that a non-practicing entity may face irreparable harm from patent infringement due to the difficulty of calculating damages—would upset *eBay*'s balance. This approach would undermine both the settled expectations for companies doing business in the U.S. and the incentives to invest in U.S. manufacturing. It would make American businesses, large and small, more vulnerable to frivolous litigation and exorbitant, unsupportable demands fueled by litigation funding.

Patent damages are not uniquely difficult to calculate. The vast majority of the time, patent owners and licensees negotiate and calculate royalties without any litigation. But some patent owners, such as many non-practicing entities, seek unfair, excessive royalties that are difficult to legally justify since they have no other incentive but to maximize profits on patent infringement litigation. The cases cited in the Statement of Interest simply show that courts at times err in awarding excessive royalties in line with a patent holder's demands. The solution to that problem is not injunctions, but the proper use of apportionment—where damages are properly limited to the value of the patented features rather than the value contributed by other features not covered by the patent—to calculate

² Christian Helmers & Brian J. Love, *Patent Law Reform and Innovation: An Empirical Assessment of the Last 20 Years*, 79 Int'l Rev. L. & Econ. 106210 (2024).

³ USPTO, *U.S. Patent Activity Calendar Years 1790 to the Present* (last visited July 21, 2025) https://www.uspto.gov/web/offices/ac/ido/oeip/taf/h_counts.htm; Stanford Law School, *NPE Litigation Database* (last visited July 21, 2025) <https://npe.law.stanford.edu>.

patent damages in patent cases. This goal can be accomplished, for example, through better judicial gatekeeping of damages expert testimony.

Expanding injunctive relief would only make things worse. An injunction in these situations provides a non-practicing entity with “undue leverage” to demand “exorbitant fees” disconnected from the economic value of an invention. See *eBay*, 547 U.S. at 396-97 (Kennedy, J., conc.). In other words, injunctions allow non-practicing entities to extort damages or fees that are beyond the value of the patents they assert.

Further, non-practicing entities do not need injunctions to maintain exclusive control over their patents. An injunction may be needed to maintain control over a unique asset in certain circumstances, such as when a company does not license its differentiating patents, or only licenses on a limited exclusive basis to allow for product commercialization. But where a patent owner chooses to license its patent broadly, the patent owner has shown that it has picked a non-exclusive patent licensing model rather than control over exclusivity.

In short, the position advocated in the Statement of Interest would upend the careful balance struck in *eBay* and empower patent holders to use the threat of an injunction to extract excessive value from companies that manufacture and sell products in the United States. This disproportionate leverage would undermine U.S. innovation and impose unfair and excessive costs on American businesses. We urge the DOJ Antitrust Division, the Commerce Department, and the USPTO to reconsider and to, instead, advocate to maintain the balance that has promoted American competitiveness for two decades.

Very truly yours,

Save Our Standards

ACT | The App Association

Alliance for Automotive Innovations

Engine

High Tech Inventors Alliance (HTIA)

National Retail Federation (NRF)

Public Knowledge

Software Information Industry Association (SIIA)

cc: Michael J.K. Kratsios, Assistant to the President for Science & Technology and
Director of the White House Office of Science & Technology Policy

Gail Slater, Assistant Attorney General of the United States Department of Justice,
Antitrust Division

John Squires, Under Secretary of Commerce for Intellectual Property and Director of
the United States Patent and Trademark Office



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



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 Innovations

From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.

www.autosinnovate.org.



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.

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**High Tech Inventors Alliance
(HTIA)**

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/>.



National Retail Federation (NRF)

The NRF Foundation provides the skills and resources needed for a life-changing career. As NRF's nonprofit 501(c)(3), we connect people to an industry that's a great place to start and a great place to grow. Together, we help people build better lives and stronger communities. nrfoundation.org



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**Software Information Industry
Association (SIIA)**

SIIA is the voice for the specialized information industry. Our members provide data, content and information that drives the global economy, informs financial networks and connects learners and educators. SIIA unites, defends and promotes our diverse membership. Learn more at: <https://www.sii.net/>