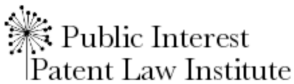

January 28, 2026

Claire Avery-Page
Director for Innovation and Intellectual PropertyOffice of the United States Trade Representative
Executive Office of the President
600 17th Street NW
Washington, D.C. 20508

RE: ***Joint Stakeholder Submission Regarding the U.S. Trade Representative's Request for Comments and Notice of Public Hearing Regarding the 2026 Special 301 Review [USTR-2025-0243]***

The undersigned write to provide shared views on a critical issue in the context of the U.S. Trade Representative's Special 301 process: the increasing threat from certain German courts and the Unified Patent Court (UPC) concerning licensing proceedings for standard-essential patents (SEPs). These courts have been enjoining the sale of products that support standards—like Wi-Fi, cellular, audio/video compression, and others—and in effect imposing global SEP licenses on U.S. product companies. These courts do so without requiring SEP owners (who have voluntarily contributed their patents to standards) to satisfy their obligations to license on fair, reasonable, and non-discriminatory (FRAND) terms.

Those German courts and the UPC also have been targeting U.S. and other companies with anti-suit injunctions that prohibit them from pursuing judicial proceedings in the United Kingdom to determine FRAND royalty rates for SEPs. This judicial imperialism from a few German and UPC courts threatens innovative U.S. product companies and manufacturers who are willing to pay royalties and are simply seeking a judicial determination of a fair rate. In contrast, the UK proceedings are consistent with TRIPS obligations, contrary to the arguments of a small minority of SEP licensors. Additional background and supporting analysis are provided in the attached annex.

The Importance of Standard Essential Patents to Innovative Product Companies

The European approach to SEPs is a growing problem for companies seeking to innovate and build in the United States and sell their products in Europe. This trend increasingly results in the denial of fair market conditions for U.S. innovators. An increasing share of our members'

products depend on collaboratively-developed technical standards for interoperability. But increasingly, our members are unable to secure reasonable and predictable SEP license rates. The resulting chaos and uncertainty are stifiling U.S. investment and costing American jobs across consumer and enterprise sectors, jeopardizing America's competitiveness and national security.

When standard-setting organizations develop technical standards, patent owners that voluntarily contribute their patented technologies to the standard commit to license those patents on FRAND terms. Our members are willing to pay FRAND rates for valid patents required to implement standardized technologies, but are routinely prevented from doing so.

In practice, SEP holders routinely disregard their FRAND promises. Whether explicitly or implicitly, SEP owners frequently refuse to license their SEPs on FRAND terms, needlessly taxing investment and innovation. Alarmingly, this behavior faces no consequences in certain German courts or in the UPC, where SEP holders are awarded injunctions regardless.

The licensing ecosystem suffers from a fundamental lack of transparency, depriving product companies of basic information needed to identify what terms are genuinely FRAND. Also, companies often lack in-house expertise to determine SEP validity, essentiality, and FRAND rates, and cannot afford to litigate or risk being enjoined from selling their products in Germany or across Europe.

This threat of SEP injunctions creates a "hold-up" scenario where negotiations are driven not by the patents' value but by the coercive power of potential business disruption, forcing product companies to accept inflated rates that contradict the FRAND commitment. Accordingly, SEP holders are able to obtain rates that are often many times higher than the FRAND rates that are ultimately determined by courts that are willing to adjudicate them, such as those in the U.S. and UK. It is therefore critical that the U.S., and other key trading partners, take long-overdue steps to prevent SEP licensor overreach by advancing transparency, predictability, and fairness in SEP licensing frameworks.

Diverging Approaches to Global SEP Disputes

We urge USTR to find that the German and UPC courts' approaches to SEP adjudications is flawed. In particular, German courts award injunctions as a remedy for infringement of a SEP without due regard to whether a SEP owner has complied with its own obligations. In doing so, they effectively impose global licenses on potential licensees and improperly use anti-suit injunctions against UK proceedings to support their approach. Some instead seek to cast the UK courts' approach to adjudicating SEP disputes under existing UK law as IP-related barriers to trade and violations of the World Trade Organization's (WTO) Trade Related Aspects of

Intellectual Property Rights (TRIPS) Article 28. We firmly reject these disingenuous characterizations and call on the U.S. to support the UK's efforts to advance fairness, clarity, and certainty in SEP licensing.

We urge USTR to recognize the fundamental distinction between the approach taken by these German courts and the UPC, and the approach taken by the UK courts. Unlike their UK counterparts, these German courts do not determine whether SEP owners have met their obligations and instead employ improper coercive judicial orders (anti-suit injunctions and anti-anti-suit injunctions) that restrict parties' ability to enforce or defend TRIPS-protected rights abroad. These practices give rise to the same WTO liability findings that applied to China's anti-suit injunction policy. By contrast, UK courts operate through contract law interpretation without proactively restricting foreign patent enforcement. As detailed in the attached annex, the UK's approach, including the issuance of interim license declarations that are designed to prevent rather than enable SEP hold-up, is consistent with the TRIPS Agreement and does not give rise to the concerns raised in the WTO's ruling against China.

We thank the USTR for its consideration of our views.

Sincerely,

ACT | The App Association

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Public Interest Patent Law Institute (PIPLI)

Save Our Standards (SOS)

Software & Information Industry Association (SIIA)