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

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

As a supplement to the U.S. Trade Representative's Special 301 review hearing, during which the Special 301 Subcommittee posed numerous questions about standard essential patent (SEP) licensing, the undersigned submit these comments to: (1) highlight U.S. industry consensus on the intersection of standards, patent rights, competition, and trade; (2) emphasize concerns with the clear and present risk posed by courts in Germany and the Unified Patent Court (UPC) in their handling of SEP licensing and injunctive relief; and (3) call upon USTR to take steps consistent with our recommendations shared below. Germany and the UPC continue to issue injunctions blocking the sale of products that implement widely-used standards—including wireless connectivity and audio/video compression—and force U.S. innovators to accept worldwide SEP licensing arrangements without the benefit of an adjudicated FRAND rate. In doing so, they deny market access to U.S. entities that rely on SEP holders' voluntary commitments to make SEP licenses available on fair, reasonable, and non-discriminatory (FRAND) terms, by incentivizing inappropriate use of injunctions

Certain German courts and the UPC have also issued anti-suit injunctions (ASIs) against U.S. businesses, preventing innovators from obtaining FRAND determinations and enforcing contractual commitments. This overreach by these tribunals places American product developers and manufacturers at risk. We urge the Special 301 Committee to reject erroneous assertions made during the Special 301 hearing attacking the SEP proceedings in the United Kingdom, which, in reality, are grounded in widely-accepted contract law principles and align with obligations under World Trade Organization's TRIPS Agreement.

The Importance of FRAND Licensing of Standard Essential Patents to Innovative Product Companies

The Special 301 record and testimony demonstrates that while a growing portion of modern devices relies on interoperable technologies created through collaborative standard-setting, many U.S. companies increasingly find it difficult to obtain SEP licenses at rates that are truly FRAND. This instability is undermining fair competitive conditions for American innovators, discouraging investment, and threatening jobs in both consumer and enterprise technology sectors, while also raising concerns for U.S. competitiveness and national security.

Technical standards are developed within standard-setting organizations, where patent holders that develop technologies that are incorporated into a standard make voluntary contractual promises to make those patents available on FRAND terms. In practice, however, companies using standards are frequently unable to secure licenses that reflect FRAND commitments.

SEP owners often ignore or sidestep their FRAND obligations in licensing negotiations, for example, by hiding behind confidentiality protections in their licenses with third-parties to present limited information on the royalty rates obtained. In many cases, they expressly or effectively decline to offer SEP licenses consistent with their contractual promises, placing unnecessary burdens on investment and technological development. We know this because courts which are tasked with setting FRAND terms rarely—if ever—conclude that the SEP holder has made a FRAND offer. Even more troubling, German courts and the UPC liberally grant injunctions in SEP disputes without determining if the patent in question is even valid or considering the patent owner's attempts to skirt their FRAND undertakings—incentivizing the use of injunctions to obtain supra-FRAND rates.

The broader licensing environment is also marked by limited transparency. As noted above, confidentiality is used to limit a potential licensee's access to relevant information about comparable terms granted to other licensees. Product manufacturers often lack access to the basic information required to assess what licensing terms actually qualify as FRAND. Many companies do not possess the immense resources and internal expertise to evaluate patent validity, determine whether a patent is truly essential to a standard, or calculate appropriate royalty levels. At the same time, the cost and risk of litigation—especially the possibility of injunctions blocking product sales in Germany or throughout Europe—can make challenging unreasonable demands prohibitively difficult.

These dynamics create classic "hold-up" conditions, where negotiations are shaped less by the underlying value of the patents and more by the leverage created by the threat of market disruption. Faced with that pressure, U.S. companies are pushed to accept royalties far above levels later determined to be FRAND by courts willing to decide those questions, including

tribunals in the U.S. and the UK. For this reason, it is essential that the U.S. and other major trading partners take overdue action to curb excessive conduct by SEP licensors by promoting greater transparency, predictability, and fairness in SEP licensing systems.

United Kingdom Courts' Contract-Based Approach to Adjudicating SEP Licensing Disputes Do Not Deny Adequate and Effective Protection of Intellectual Property Rights

In contrast to the practices of German and UPC courts, and consistent with the approach taken in the U.S., the United Kingdom's methodology for resolving SEP disputes—specifically its issuance of declarations on interim licenses and its willingness to determine global FRAND terms—does not implicate any violation of the TRIPS Agreement. We respectfully request that the Special 301 Subcommittee disregard the inaccurate portrayals of this process that have been submitted to the record and voiced during the Special 301 hearing.

Critics of the UK framework have directed attention to Articles 28.1 and 28.2 of the TRIPS Agreement. Article 28.1 confirms a patent owner's right to exclude unauthorized third parties from making, using, or selling the patented invention. Article 28.2 affirms the patent owner's right to assign the patent and to enter into licensing contracts. These provisions establish important rights—rights the SEP owner contractually limited when it participated in the standardization process, so they do not render those rights absolute or immune from limitations the patent owner voluntarily accepts. The FRAND commitment operates as precisely such a limitation. A TRIPS claim cannot override that contractual obligation.

When a UK court declares the terms a willing licensor would offer or determines an interim license, it does not purport to override infringement proceedings before German courts, the Unified Patent Court, or other tribunals. If a defendant in those proceedings raises the UK court's determination as a defense, the foreign court will evaluate that defense under its own laws. The UK court has not constrained that authority; it has simply offered its own analysis, which the foreign court may consider under its national legal framework.

In any case, a recent decision of a World Trade Organization Appeal Panel, in an appeal of a complaint brought the European Union against China concerning Chinese anti-suit injunctions, explained in its decision that rate-setting by a Court is compatible with TRIPs—see the decision of 21 July 2025 at 4.162: "*China, by contrast, makes the point that, by committing to provide a license on FRAND terms, a SEP holder has opened itself to the possibility that a court somewhere may be called upon to determine the FRAND terms. For China, therefore, the possibility that there will be litigation over FRAND terms as part of good faith negotiations over the conclusion of a licensing contract is within the scope of the SEP holder's meaningful exercise of its right under Article 28.2. We do not disagree. Indeed, we observe that the Panel found, as a factual matter, that '[i]t is not uncommon… that parties do not reach an agreement' and '[i]n some jurisdictions parties may… be able to bring litigation to determine the terms of the*

licence.' There is nothing inherently or necessarily incompatible between the intervention by a court to settle a dispute over FRAND terms and the obligation under Article 28.2 of the TRIPS Agreement, which protects a SEP holder's 'right … to conclude licensing contracts' for a SEP held in the territory of a given Member…"

The potential defense available to the defendant derives from the patent holder's own commitment. The patent holder promised to license its essential patents on FRAND terms. A UK court, at the request of a licensee, has provided its assessment of what those terms should be. It is consistent with TRIPS to recognize and interpret that contractual agreement.

Similar considerations apply when UK courts order binding global FRAND licenses, since FRAND terms were the condition they accepted in exchange for inclusion of their technology into the standard. Such orders do not divest patent holders of their rights or compel them to license against their fundamental interests. Rather, they give effect to the license the patent holder already committed to grant. The English Court of Appeal has observed that the FRAND commitment constitutes a "derogation from the patentee's normal entitlement to enforce its patent by means of an injunction." The patent holder, having received a full opportunity to present its position on appropriate terms, is thus being held to the commitment it voluntarily undertook.

A global FRAND license would, if implemented, preclude infringement claims outside the United Kingdom. This outcome, however, reflects the license the patent holder represented itself as willing to grant. The patent holder agreed to forgo injunctive relief in exchange for a FRAND royalty. When a court determines that royalty after considering the parties' submissions, it completes the transaction the patent holder proposed.

The UK approach to SEP adjudication does not diminish patent rights. It enforces commitments that patent holders voluntarily made. By participating in standard-setting and pledging FRAND licensing, patent holders accepted that they would not invoke exclusionary rights against implementers willing to pay FRAND royalties. UK courts, by declaring appropriate royalties and requiring licenses on those terms, ensure that patent holders honor this undertaking.

This framework differs from the German and UPC practices identified elsewhere in these comments as raising concerns. Those courts have issued injunctions without adequate FRAND analysis, potentially enabling patent holders to avoid their commitments. UK courts, by contrast, require patent holders to adhere to those commitments. The UK approach thus supports the standard-setting bargain rather than undermining it. In contrast, if implementers are prevented from enforcing the SEP holder's contractual commitment and obtaining licenses that are actually FRAND, this risks undermining the entire standard-setting process on which major technological developments have and continue to be made.

The Special 301 Report to Congress Must Address Efforts by German and UPC Courts that Deny Market Access to U.S. Companies

We respectfully request that USTR determine, in its Special 301 report, that the methods used by certain German courts and the UPC in SEP disputes are fundamentally deficient. German tribunals, in particular, frequently grant injunctions for alleged infringement of a standard essential patent without adequately considering whether the patent holder has honored its own FRAND commitments. As a result, implementers are coerced into accepting supra-FRAND worldwide licensing arrangements or face exclusion from an entire market. They also deploy anti-suit injunctions to block proceedings in the United Kingdom, reinforcing this approach. At the same time, some critics attempt to portray the United Kingdom's handling of SEP cases under its domestic law as an intellectual property-related trade barrier and as inconsistent with Article 28 of the TRIPS Agreement administered by the World Trade Organization. Those claims are misplaced, for the reasons already discussed above. We strongly reject these characterizations and encourage the United States to support the UK's efforts to promote greater clarity, fairness, and predictability in SEP licensing.

Accordingly, representing a strong consensus from across U.S. industry, we call on USTR to:

- Document how the systematic grant of SEP injunctions, without meaningful FRAND inquiry, violates the spirit, if not the letter, of the TRIPS Agreement's requirements that enforcement procedures be fair and equitable and avoid creating barriers to legitimate trade.
- Highlight the recent escalation in which German and UPC courts have begun issuing orders that bar U.S. companies from enforcing contractual rights, including arbitration agreements and forum selection clauses, in foreign jurisdictions and from entering into freely negotiated settlements without court oversight.
- Engage with the European Commission and EU member states to urge alignment with the CJEU's *Huawei* framework and restore balance to SEP enforcement.
- Ensure that the Special 301 Report draws a clear and principled distinction between the practices of German, UPC, and Chinese courts, on the one hand, and those of U.S. and UK courts, on the other. While German, UPC, and Chinese courts have deployed injunctions and anti-suit injunctions as coercive tools, often with little regard for FRAND obligations or the territoriality of patent rights, U.S. and UK courts have applied these instruments narrowly and with deference to international comity.

We thank the USTR for its consideration of our views.

Sincerely,

Association for Competitive Technology (ACT)

Computer & Communications Industry Association (CCIA)

Engine

Public Interest Patent Law Institute (PIPLI)

Save Our Standards (SOS)

Software Information Industry Association (SIIA)