

**USPTO Public Listening Session
Innovating Ideas on Standards and Intellectual Property**

**Statement of Brian Pomper
Executive Director
Innovation Alliance**

**September 20, 2023
Alexandria, VA**

As Prepared for Delivery

Director Vidal, Director Locascio, and Deputy Under Secretary Farrell, thank you for the opportunity to speak today on these important issues. My name is Brian Pomper, and I am Executive Director of the Innovation Alliance, a coalition of research and development-based technology companies committed to ensuring the U.S. patent system promotes innovation, economic growth, and job creation. Innovation Alliance companies are active in standards organizations and at the forefront of critical and emerging technologies in communications, semiconductors, artificial intelligence, and positioning and navigation.

The Innovation Alliance commends you for your work on the National Standards Strategy for Critical and Emerging Technologies the White House released in May. My remarks will support and reinforce many of the key objectives of the Strategy.

U.S. global technology leadership depends on U.S. innovators actively participating in global standard-setting. Standards facilitate R&D and commercialization of universal technologies like 5G wireless and WiFi, as well as cutting-edge technologies like artificial intelligence and 6G. Standards ensure that the devices we use in our daily lives are open and accessible—increasing safety, reliability, and interoperability, while lowering costs for implementers and consumers.

U.S. innovators contribute billions of dollars per year in private sector R&D investment to develop the technology in global standards. The promise of recouping their investment in R&D through licensing their patents incentivizes U.S. innovators to invent and participate in standards. Without the opportunity to receive a fair return offered by enforceable patent rights, U.S. innovators will divert their engineering talent and business expertise elsewhere, and the United States will fall far behind other countries.

We already see troubling signs that the U.S. is losing our technology leadership position:

- According to WIPO, the U.S. share of global patent activity has fallen from 34% to only 19% in 2020, while in the same period China's share grew to over 43% of the total.
- A year-long study funded in part by the State Department found that China now leads the world in 37 out of 44 key technologies—including in defense, space, robotics, biotechnology, artificial intelligence, and advanced manufacturing.

Leadership in key technology standards in 5G, quantum computing, artificial intelligence and other areas confer significant economic and military advantages. But as the National Standards Strategy makes clear, China’s current policies undermine the integrity of the standards process and “tilt the playing field to their parochial advantage.”

The Administration can play a critical role in ensuring the United States remains the world leader in innovation by advancing policies that allow U.S. innovators to obtain U.S. patents, enforce them in U.S. courts, and participate fairly in global standard-setting.

First, U.S. policymakers must not follow the lead of China and the European Union to devalue patents essential to standardized technologies. China adopted policies allowing the state to set SEP royalty rates, using the guise of antitrust law to cut costs for domestic industries at the expense of U.S. and allied innovators. And the European Union has proposed a regulation to set SEP royalty rates, which would not only disadvantage U.S. innovators, but – as Secretary Raimondo noted in recent congressional testimony – also legitimizes China’s efforts to devalue IP.

Artificially depressing patent royalties or limiting the ability of U.S. innovators to enforce patents, undermines the very purpose of IP: to give innovators financial incentives to make costly and risky R&D investments. Without strong contributions from U.S. innovators, foreign technologies, most likely developed in China, will dominate global standards.

Second, U.S. policy should strengthen incentives to innovate in the United States, to participate in standards, and to protect technology leadership. In particular, we believe revisions to U.S. export control rules to allow U.S. innovators to participate fully and openly in international standards development, and the withdrawal of prior USPTO-NIST-DOJ joint policy statements on SEPs were critical for promoting U.S. leadership in global standards setting. While we were disappointed that delays in arriving at these policies created harmful uncertainty as to whether SEPs were enforceable or whether standards participation violated export control laws, we commend the ultimate outcome and appreciate the Administration’s efforts to clarify these policies.

In other respects, however, patent law developments in the past fifteen years have created uncertainty that have devalued patent protections, particularly for small and medium-sized innovators. Supreme Court decisions have crippled the ability of U.S. innovators to stop infringement of their patents and made it harder for critical and emerging technologies like AI, biotechnology, and personalized medicine to obtain patents at all. And proceedings before the PTAB have erected additional for innovators trying to enforce their rights.

The Innovation Alliance urges the Administration to advance efforts to restore core patent rights, like the PREVAIL Act, to restore fairness to the Patent Trial and Appeal Board, and the Patent Eligibility Restoration Act, to bring needed clarity to the scope of patent eligibility.

At the same time, we urge the Administration to oppose legislation that further weakens patent rights, including measures empowering courts or government agencies to set SEP royalty rates, or that punish U.S. inventors for trying to enforce their patent rights in foreign courts. These

efforts harm U.S. innovation and legitimize China’s own attempts to devalue U.S. inventions to benefit of their own domestic industries.

Third, we strongly support continued work with our allies to ensure global standards setting processes are technically sound and independent, and to resist efforts by countries like China to leverage state resources and power to promote their own standards “designed solely to entrench market dominance” and undermine international standards development.

The success of 4G licensing in the auto industry demonstrates the need to work closely with our allies to maintain the integrity of global standards-setting. The majority of global automakers—virtually all major manufacturers outside of China—have signed licensing agreements allowing them to use 4G wireless for their connected vehicles. Most Chinese automakers, however, use 4G without paying licensing fees. Robust, merit-based standards development processes ensure that Western innovators and implementers can compete in the global market for connected cars and other wireless devices, not only in 4G, but in 5G and next generation wireless technologies.

We applaud the Administration’s efforts to work through multilateral agreements and organizations to promote robust standards governance practices that safeguard the integrity of standards development that is consensus-driven, merit-based, and private sector-led, to give U.S. and allied innovators a fair chance to compete for leadership in critical and emerging technologies.

Thank you for the opportunity to speak with you today, and I look forward to your questions.