



November 6, 2023

The Honorable Katherine Vidal  
Under Secretary of Commerce for Intellectual Property and Director  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

The Honorable Laurie E. Locascio  
Under Secretary of Commerce for Standards and Technology and Director  
National Institute of Standards and Technology  
100 Bureau Drive  
Gaithersburg, MD 20899

The Honorable Marisa Lago  
Under Secretary of Commerce for International Trade  
1401 Constitution Ave NW  
Washington, DC 20230

**Comments of Innovation Alliance in Response to Joint ITA-NIST-USPTO Collaboration Initiative Regarding Standards Request for Comments on the State of U.S. Firm Participation in Standard Setting (Docket No.: PTO-C-2023-0034)**

Dear Director Vidal, Director Locascio, and Under Secretary Lago:

The Innovation Alliance appreciates the opportunity to submit these comments in response to the Joint ITA-NIST-USPTO request for comments on U.S. participation in global technology standard setting and the ability of U.S. innovators to grow and compete for leadership in critical and emerging technologies. As a coalition of research-and-development-based technology companies at the forefront of critical and emerging technologies in communications, semiconductors, artificial intelligence, and positioning and navigation—including small- and medium-sized enterprises—the Innovation Alliance supports policies that promote U.S. leadership in innovation.<sup>1</sup>

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<sup>1</sup> <https://innovationalliance.net/>.

To advance this goal, the United States must have a significant role in global standard setting and ensure its patent system encourages invention, economic growth, and job creation. Innovation Alliance companies participate actively in standards organizations, and a regulatory environment that supports U.S. innovation leadership is key to maintaining the United States' global competitiveness. The Innovation Alliance commends the ITA, NIST, and the USPTO for their work on the National Standards Strategy for Critical and Emerging Technologies that the White House released in May,<sup>2</sup> and supports many of the key objectives of the Strategy. We hope these comments will reinforce those goals.

U.S. global technology leadership depends on U.S. innovators actively participating in global standard setting. Standards facilitate the research and development (R&D) of universal technologies like WiFi and 5G wireless networking, as well as cutting-edge innovations including artificial intelligence and 6G. Standards also promote commercialization, ensuring 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 technologies used in global standards. In exchange for publicly disclosing new technologies and contributing them to standards, U.S. innovators seek patent protections, which they can then license to obtain a return on their investment.

The promise of recouping their R&D investments incentivizes U.S. companies to continue innovating and developing standards. This virtuous cycle of investment and invention powers the U.S. innovation economy. Enforceable patent rights offer U.S. innovators the opportunity to recoup their investment and receive a fair return; without this opportunity, the nation's most innovative companies will divert their engineering talent and business expertise elsewhere, and the United States will fall behind.

We already see troubling signs that the U.S. is at risk of losing its technological advantage:

- According to the World Intellectual Property Organization, the United States' share of global patent applications fell to just 17 percent in 2021, while China's share grew to over 46 percent of the total.<sup>3</sup>
- 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,

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<sup>2</sup> The White House, *United States Government National Standards Strategy for Critical and Emerging Technologies* ("National Standards Strategy") (May 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf>.

<sup>3</sup> World Intellectual Property Organization, *World Intellectual Property Indicators 2022* at 7, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf>.

artificial intelligence, and advanced manufacturing—with the United States coming in second, third, or fourth place in 38 of these areas.<sup>4</sup>

Leadership in key technology standards, including 5G, quantum computing, artificial intelligence, and other areas, confers significant economic and military advantages. But as the National Standards Strategy makes clear, China’s policies undermine the integrity of the standard-setting process and “tilt the playing field to their parochial advantage.”<sup>5</sup> Our national security requires an innovation ecosystem that keeps leading-edge technology R&D—and thus standards leadership—in the United States.

The Administration plays a critical role in ensuring the United States remains the world leader in innovation. That includes 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. It also includes promoting the development, commercialization, and adoption of the most innovative U.S. technologies.

Innovation Alliance urges ITA, NIST, and USPTO to prioritize three key priorities moving forward.

First, U.S. policymakers must not follow the lead of China and the European Union to devalue patents essential to standardized technologies. For example, China adopted policies allowing the state to set standard essential patent (SEP) royalty rates, using the guise of antitrust law to cut costs for domestic industries at the expense of U.S. and allied innovators.

The European Union similarly has proposed a regulation to set SEP royalty rates, which would not only disadvantage U.S. innovators but also legitimize China’s efforts to devalue intellectual property. Secretary of Commerce Gina Raimondo testified before the Senate Appropriations Committee that she shares concerns raised by Senator Chris Coons (D-DE) that the E.U. regulation would “validate China’s abuse of royalty setting practices,” and she committed to working with Congress to “communicate the potential harm to our global competitiveness” if the rule is adopted.<sup>6</sup>

Artificially depressing patent royalties, or limiting the ability of innovators to enforce patents, undermines the very purpose of intellectual property protections: giving innovators financial incentives to make costly and risky investments in research. If U.S. inventors cannot receive a fair return on their investment based on the value of their contributions, they will have less incentive to participate in standard setting in the first place. Without strong contributions from

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<sup>4</sup> Jamie Gaida *et al.*, *ASPI’s Critical Technology Tracker: The Global Race for Future Power*, Australian Strategic Policy Institute (2023) at 1, available at <https://www.aspi.org.au/report/critical-technology-tracker>.

<sup>5</sup> National Standards Strategy at 12.

<sup>6</sup> Review of the President’s Fiscal Year 2024 Funding Request for the Department of Commerce, Hearing Before the Subcomm. on Commerce, Justice, Science, and Related Agencies, 118th Cong. (Apr. 26, 2023).

U.S. innovators, foreign technologies, most likely developed in China, will dominate global standards.

Second, the policy of the United States should strengthen incentives to innovate in the United States, to participate in standard setting, and to protect technology leadership. For that reason, the Innovation Alliance applauds the Administration’s actions to reverse policies that chilled U.S. participation in standard setting. Several steps have been particularly critical for promoting U.S. leadership on this front; among these were revising export control rules to allow U.S. innovators to fully and openly participate in international standards development,<sup>7</sup> as well as the withdrawal of the 2019 USPTO-NIST-DOJ joint policy statement governing SEPs.<sup>8</sup> While we were disappointed that delays in arriving at these policies created harmful uncertainty—for a time, it was not clear 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, the past decade and a half of U.S. patent law and policy has created a system of uncertainty and inconsistency that devalues patent protections, particularly for small and medium-sized innovators. Supreme Court decisions have crippled the ability of U.S. innovators to stop other actors from infringing their patents, and the Court has made it harder for innovators to obtain patents at all for critical and emerging technologies like AI, biotechnology, and personalized medicine. Meanwhile, proceedings before the Patent Trial and Appeal Board have erected additional hurdles innovators must clear to enforce their rights.

All of these developments have eroded incentives to engage in R&D and participate in standard-setting, particularly for small inventors. The Innovation Alliance urges the Administration to advance efforts to restore core patent rights. Specifically, we encourage you to support bipartisan legislation including the PREVAIL Act,<sup>9</sup> to restore fairness to the Patent Trial and Appeal Board, introduced by Senators Coons and Thom Tillis (R-NC) and Representatives Ken Buck (R-CO) and Deborah Ross (D-NC), as well as the Patent Eligibility Restoration Act,<sup>10</sup> which would bring needed clarity to the scope of patentability, also introduced by Senators Tillis and Coons.

At the same time, we urge the Administration to oppose legislation that discourages innovation by weakening patent rights. Proposals to allow government agencies to set SEP royalty rates would harm U.S. innovation while legitimizing China’s own attempts to devalue U.S. inventions, to the benefit of China’s own domestic industries.

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<sup>7</sup> Authorization of Certain “Items” to Entities on the Entity List in the Context of Specific Standards Activities, 87 Fed. Reg. 55241 (Sept. 9, 2022) (to be codified at 15 CFR pts. 744, 772).

<sup>8</sup> Press Release, Dept. of Justice Office of Public Affairs, Justice Department, U.S. Patent and Trademark Office and National Institute of Standards and Technology Withdraw 2019 Standards-Essential Patents (SEP) Policy Statement (June 8, 2022), <https://www.justice.gov/opa/pr/justice-department-us-patent-and-trademark-office-and-national-institute-standards-and>.

<sup>9</sup> S. 2220, 118th Cong. (2023); H.R. 4370, 118th Cong. (2023).

<sup>10</sup> S. 2140, 118th Cong. (2023).

Third, we strongly support continued work with our allies, as described in the National Standards Strategy, both to ensure that global standard-setting processes are independent and technically sound 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.”<sup>11</sup>

It is clear that the integrity of global standard setting depends on international cooperation and collaboration. Connected vehicles, a rapidly growing market around the world, provides an illustrative example. To date, global standardization efforts have led the majority of global automakers—virtually all major manufacturers outside of China—to sign licensing agreements for 4G wireless networking, allowing them to use the technology for their connected vehicles. The licensing fees they pay—a small price for significant added value—builds momentum for further innovation.<sup>12</sup> At the same time, most Chinese automakers are outliers in the global innovation ecosystem, continuing to use 4G without licenses for the required SEPs. 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. These institutions are critical to safeguarding the integrity of standards development that is consensus-driven, merit-based, and led by the private sector. With enforceable patent rights and fair standards-setting processes, U.S. and allied innovators can meaningfully continue to compete for global leadership in critical and emerging technologies.

Sincerely,



Brian Pomper  
Executive Director  
Innovation Alliance

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<sup>11</sup> National Standards Strategy at 12.

<sup>12</sup> Avanci, *Avanci Expands 4G Coverage to Over 80 Auto Brands* (Sept. 21, 2022), <https://www.avanci.com/2022/09/21/avanci-expands-4g-coverage-to-over-80-auto-brands/>.