

**Congress of the United States**  
**Washington, DC 20515**

June 6, 2022

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 2500

Dear Mr. President:

To ensure American technological leadership, we must encourage private sector investment in research and development (R&D) by creating an atmosphere conducive to innovation and providing U.S. companies sufficient remedies to protect against infringement of their new technologies. The December 6, 2021 draft policy statement on Licensing Negotiations and Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments would work counter to the needed R&D investments and hamstring American efforts to maintain our global leadership in competition and innovation.

On a bipartisan basis, we write to express our opposition to the draft policy statements and urge that the guidance issued in 2019 be maintained. At a minimum, newly confirmed leadership of U.S. Patent & Trademark Office (USPTO) and National Institute of Standards and Technology (NIST) should have the opportunity to weigh in before further proposed policy changes.

We are in the midst of a geopolitical race for global leadership in critical technologies. If the United States does not maintain its status as a global leader in innovation, we will cede our competitive advantage to foreign governments and businesses. We cannot allow this to occur. Without American leadership, we open the door for foreign entities, including our adversaries, to compromise our national security. Every day Americans, as well as our military and intelligence systems, increasingly rely on critical technologies, and allowing our adversaries to develop and contribute standards for the next generation of technologies creates an unacceptable vulnerability.

Our competitors, including China, recognize the advantages associated with being the global leader in innovation. And they are taking intentional steps to achieve that status. For example, since 2015, China has outspent the United States by approximately \$24 billion in wireless communications infrastructure, while China's five-year economic plan calls for \$400 billion in 5G-related investment. China has also made notable gains in artificial intelligence, filing more patents than any other country, and experts warn that China may outpace the United States in artificial intelligence in a matter of years. If China emerges as the global leader in artificial intelligence, the critical technologies it develops may then be integrated into military platforms and allow it to overtake our decades-long technology advantage.

While our competitors make substantial government investments in critical technology innovation, American innovation relies on private sector investments in R&D, as well as the private sector's contribution of new technologies to global standards. In a fair market with

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proper intellectual property protections, U.S. companies that develop cutting edge, critical technologies are able to patent their inventions, recoup their investments by licensing their technologies, and then reinvest in additional R&D, creating a virtuous innovation cycle. A key part of innovation in America is ensuring sufficient remedies for infringements of patents, including standards-essential patents (SEP) subject to fair, reasonable, and nondiscriminatory licensing commitments. Regrettably, the draft policy statement does not bolster our innovation system, but rather undermines these incentives by unnecessarily curtailing the available remedies for patent infringement.

To protect U.S. companies seeking to innovate and develop the technologies critical to U.S. leadership and national security, the remedies available for SEP infringement should be aligned with the remedies otherwise available under U.S. law and consistent with how disputes are resolved in other patent cases. The availability of remedies like injunctive relief assures American innovators that they will be able to recoup their investments, and allows the private sector to continue advancing the virtuous innovation cycle through reinvestments in R&D. Weakening or removing remedies like injunctive relief sends a strong signal to foreign infringers that they can steal critical American intellectual property with impunity. It is imperative that our policies at home encourage innovation and allow U.S. companies to compete globally to maintain and advance U.S. leadership and national security interests.

Beyond the challenges the draft statement creates by critically reducing infringement remedies, it is further flawed by a rushed process devoid of proper interagency coordination. The draft statement was issued in the name of the U.S. Department of Justice, USPTO, and NIST. However, your nominee to lead NIST was just confirmed by the U.S. Senate, and therefore, has not been able to fully review the SEP policy.

We should prioritize actions that will encourage innovation and equip America to lead amid fierce competition abroad. To do otherwise will jeopardize national security by ceding U.S. technological leadership to China and other competitors who are actively investing in becoming global leaders in innovation.

We appreciate your attention to this important matter.

Sincerely,



Bill Posey  
Member of Congress



Scott H. Peters  
Member of Congress

CC: The Honorable Merrick Garland, United States Attorney General  
The Honorable Gina Raimondo, United States Secretary of Commerce  
The Honorable Jake Sullivan, Assistant to the President for National Security Affairs