

September 9, 2024

Dear Member of Congress:

The undersigned are conservative leaders concerned about maintaining the United States' global leadership position in researching, developing, and deploying next-generation critical and emerging technologies. We urge Congress to protect U.S. national security by shoring up the policy underpinnings that will protect our country's innovation leadership in key technologies.

America looks to the next Congress and presidential administration to address China's threat to overtake the United States as global technological leader. We ask leaders in the U.S. Senate and House of Representatives, as well as in the current administration and those working with former President Trump, to commit to efforts over the remainder of this year and beyond for bolstering our nation's mainstays for outpacing China. If ever there were a time when partisan division should stop at the ocean's edge, that time is now.

Some in both parties have lost sight of those mainstays, how they have differentiated our nation and have made us the most inventive nation in the world. Instead, some are drawn to copying the destructive policies that China, the European Union, and others have embraced, namely regulatory rate-setting. Others advocate U.S. decoupling from China.<sup>1</sup> Both of these are unwise courses that would set America back. Instead, we urge a return to our strengths.

Mainstays of U.S. innovative and economic success include the rule of law, secure private property rights, a market-based economic system, and the right of contract.<sup>2</sup> Unfortunately, these cornerstones have been weakened at home and are increasingly assaulted by foreign competitor nations.

Both China and the EU are erecting government rate-setting regimes.<sup>3</sup> These strip value from R&D-, risk-intensive innovation. They harm American innovation leaders, whose valuable patents require Chinese and other technology implementers to pay market value to use the innovative technology. These revenues fund R&D that

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<sup>1</sup> [Coalition letter to White House national security and economic officials](#), Jan. 23, 2020. Also, see Edward Luce, "[The risks of US-China decoupling](#)," *Financial Times* (Feb. 9, 2024).

<sup>2</sup> Ed Martin and James Edwards, "[How America's Democratic Foundation Promotes Innovation and U.S. Security](#)," *Real Clear Policy* (July 25, 2024).

<sup>3</sup> Jonathan M. Barnett, "[How Regulators Endanger U.S. and EU Technology Leadership in the Global Wireless Marketplace](#)," *Center for Strategic & International Studies Blog* (Feb. 8, 2024).

advances the state of the art to the next generation of a given technology. They also support innovators' participation and leadership in technology-related standards development.

U.S. leadership in strategic sectors such as semiconductors, artificial intelligence, advanced communications, and biotechnology stand at risk in China (and elsewhere) from industrial espionage, IP theft and infringement, mandatory technology transfer, and "competition" policies that favor implementers over innovators. And China heavily subsidizes its "national champion" technology firms, such as Huawei and ZTE. In turn, these favored Chinese firms don't have to depend on performance in the marketplace to thrive. They take advantage of American antipatent policies and procedures, such as challenging in the Patent Trial and Appeal Board, with its very high likelihood of invalidation rulings, the patent validity of IP owned by those who have sued the challengers for patent infringement.

Further, China, home to most of the implementers, has weaponized its courts. They claim unilateral authority to dictate the value of global patent portfolios and then award royalty rates well below market value. Chinese courts also favor domestic technology implementers by issuing antisuit injunctions, which prohibit innovators from continuing current lawsuits or pursuing new litigation against infringers in foreign courts.<sup>4</sup>

Meanwhile, the EU in 2023 set forth a government-run, centralized scheme for determining which patents are essential to a technological standard and setting an aggregate royalty rate. This proposal would stick government's nose into what has heretofore been a private contractual negotiation, where market factors inform an agreed-upon rate. The EU arrangement would harm all innovators and reduce innovation.<sup>5</sup> This includes inflicting harm on Europe's leading innovators such as Ericsson and Nokia. This proposal aids Chinese patent-infringing implementers and China's subsidized innovators, at the expense of Western innovators.<sup>6</sup> Astoundingly, certain European Commission leaders have encouraged China to follow this path of patent price regulation, indifferent to the negative impact on western technology leadership.

The escalating pattern of attack on IP rights via a global rate-setting cartel of foreign governments is extremely dangerous. It drains the value from cutting-edge innovation. It denies IP owners' ability to protect their property. It jeopardizes the

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<sup>4</sup> See Sen. Thom Tillis's [Defending American Courts Act](#), referenced [here](#).

<sup>5</sup> See Alden Abbott, "[Proposed European SEP Regulation Would Undermine Efficiency, Innovation and Economic Growth](#)," *IPWatchdog* (May 29, 2023).

<sup>6</sup> James Edwards, "[Handing China Innovation Leadership](#)," *Real Clear Policy* (May 19, 2023).

virtuous circle of monetizing innovation through IP licensing, in which private contract and free-market forces determine the value of innovations.

Some in this country call for weakening our patent system because foreign companies, including Chinese firms, are increasingly granted U.S. patents and enforce those patents against U.S. companies.<sup>7</sup> But further weakening the U.S. patent system would not stop China; it would stop America’s leading innovators. Without a reliable legal system at home, U.S. innovators would have to rely on foreign jurisdictions—including those with inadequate rule of law and a proven propensity to devalue innovation—to obtain compensation for their inventions.

Maintaining a strong U.S. patent system is the best response for countering threats to U.S. technological leadership. For centuries, a strong, reliable patent system has been the foundation that has enabled U.S. innovators to compete and thrive around the globe. American policymakers must strive to preserve this system, rather than join a race to the bottom.

Secure, enforceable patents are the foundation of U.S. leadership in critical emerging technologies. That foundation and its fruits of innovation leadership are the essential combination that delivers a thriving U.S. economy and guarantees our national security against rivals such as China.

In conclusion, we urge single-mindedness and renewed bipartisan commitment together to bolster the mainstays of U.S. innovative and economic success. Restore our patent system so that U.S. innovators enjoy reliable, predictable patent rights and remedies such as injunction. Bring into line the policies and practices of those federal agencies that undermine our patent system. You must pursue these course corrections if the United States is to lead the world in such technologies as 5G and 6G wireless connectivity, quantum computing, artificial intelligence, and biomedical therapeutics and cures. Our national security and America’s future rely on it.

Respectfully,

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<sup>7</sup> James Edwards, “[Legislative Lessons from Cutting Procedural Corners](#),” FedSoc Blog (Jan. 2, 2024).

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