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Chairman Smith, Ranking Member Sanchez, and Members of the Subcommittee:

Thank you for the opportunity to testify today on the critical role of intellectual property (IP) in advancing American economic strength, technological leadership, and national security. Strong and enforceable IP rights are a cornerstone of the U.S. innovation economy and a central pillar of U.S. trade policy.

IP-intensive industries account for a substantial share of U.S. GDP, exports, and high-wage employment.[1] Beyond their economic contribution, IP rights are essential to U.S. national security, underpinning American leadership in advanced manufacturing, semiconductors, biotechnology, artificial intelligence, telecommunications, and other strategic sectors where global competition is intensifying. In 2022, the United States enjoyed an IP trade surplus of $74 billion, standing in stark contrast to China's $31 billion IP trade deficit.[2]

Both Congress and the Administration have essential roles to play in strengthening American innovation through a reliable and effective domestic IP system and through sustained engagement with trading partners around the world. That commitment must extend across all forms of intellectual property, including patents, trademarks, copyrights, trade secrets, and data protection. Within this framework, the U.S. International Trade Commission (ITC) plays a particularly important role by providing timely and effective remedies against unfair trade practices involving infringing imports.
In recent years, however, a vacuum of U.S. leadership on IP issues globally has created an opening for both allies and adversaries to advance their own preferred IP policy models on the international stage—often to the detriment of U.S. innovators. Recently, much of the focus abroad has been on combatting outright theft of American IP, particularly by foreign companies and state-backed actors, including in China. While those challenges remain serious, the landscape has evolved. Increasingly, foreign governments are employing more sophisticated strategies—using regulatory processes, procedural mechanisms, and ostensibly neutral policy frameworks to disadvantage U.S. companies abroad while favoring domestic or preferred foreign competitors and other national priorities. These approaches are often harder to detect and counteract, but no less damaging to U.S. economic and technological leadership.

Taken together, these challenges require a coordinated, whole-of-government response from the United States. That response should include strong and enforceable IP chapters in U.S. trade agreements,

[1] Andrew A. Toole, Richard D. Miller, Nicholas Rada, USPTO, *Intellectual Property and the U.S. Economy* iii (3rd ed. 2022), https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf.
[2] Chris Borges, *Innovation Lightbulb: the U.S. IP Trade Surplus*, Center for Strategic and International Studies (May 12, 2025), https://www.csis.org/analysis/innovation-lightbulb-us-ip-trade-surplus.

continued and rigorous use of the U.S. Trade Representative's Special 301 process to identify and address harmful practices, and sustained engagement with both allies and adversaries when their laws or regulatory frameworks undermine effective IP protection and enforcement.

At the same time, external engagement will not succeed if the United States does not also tend to its own IP system. Several aspects of U.S. IP law require strengthening and modernization to keep pace with technological change and to address the unintended consequences of judicial decisions and outdated statutory frameworks. A strong and reliable IP legal system is the foundation of the American innovation economy, and like any foundation, it requires continual maintenance to support long-term investment, commercialization, and global leadership.

Much of the responsibility for IP enforcement, of course, also falls to the rightsholders themselves. This is particularly true of the ITC where U.S. innovators increasingly look for enforcement because significant infringing products come through the border from foreign countries, and because Article III courts in the United States have become less effective at enjoining infringing products in general—their proceedings are slow, expensive, and effectively lack injunctive relief in most cases. The ITC must remain a strong, efficient and clear venue for enforcement of IP rights. For example, the ITC's "public interest" test cannot become a de facto escape clause for large infringers simply because they have achieved market dominance and the removal of their product would affect consumers. That is the very point of an ITC exclusion order: to provide an exclusionary remedy to widespread importation of products that infringe U.S. IP rights and injure a domestic industry.

With this context in mind, I offer the following recommendations for actions Congress can take to reinforce U.S. leadership in innovation, trade, and technology.

The United States Must Reassert Itself as a Global Leader in IP Through Reinvigorated Engagement with Foreign Governments and Stronger Trade Agreements

U.S. companies—particularly those whose competitiveness depends on patents, trademarks, copyrights, and trade secrets—rely on balanced, stable and predictable IP protection in foreign markets. Continued and intensified pressure on trading partners to strengthen their own domestic IP standards and enforcement practices is essential to safeguarding U.S. investment overseas and maintaining a level playing field in global trade.

Strong IP rights and enforcement mechanisms overseas ensure that foreign countries do not free-ride on American innovation, and simultaneously enable American innovators to expand world-wide while reducing the price for new technology in the United States. Insisting on robust IP protections in trade deals ensures that foreign countries pay their fair share for American innovation and helps reduce the cost burden American consumers have to pay for new technologies that benefit the entire world.

The United States has a range of tools to address IP practices abroad that disadvantage American companies and consumers. The U.S. Trade Representative's Special 301 process remains an important mechanism for identifying and calling out the most serious violations, but sustained bilateral and multilateral engagement is equally critical. Congress has an important role to play by encouraging and supporting ongoing executive branch engagement, raising concerns through hearings and correspondence, and, where necessary, considering legislative responses. Examples of current foreign practices that merit closer scrutiny include:

- ***EU General Pharmaceutical Legislation (GPL).*** The United States should press for revisions to the European Union's recently adopted General Pharmaceutical Legislation (GPL), which undermines key intellectual property incentives for medical innovation. The GPL reduces baseline periods of regulatory exclusivity for new medicines and conditions the restoration of that

protection on factors outside an innovator's control, such as the timing of marketing or reimbursement decisions by individual member states. It also expands research exemptions beyond their originally intended non-commercial scope to cover commercial activities, such as pricing and reimbursement filings, making it more difficult for innovators to detect and address potential generic entry while patents remain in force. Together, these changes weaken the enforceability and value of IP rights, diminish incentives for future research and development, and create new barriers for U.S. companies operating in European markets—outcomes that, despite being framed as competitiveness measures, risk slowing medical innovation and emboldening global competitors that already show limited respect for U.S. intellectual property. In addition, such weakening of IP rights overseas further increases the free-rider problem and shifts the cost burden for medical innovation to American consumers even more.

- ***Other jurisdictions' standard essential patent (SEPs) practices.*** Several jurisdictions, including the European Union, the United Kingdom, and China, have proposed or implemented policies that would significantly regulate standard-essential patents, including through government-imposed price setting or court rulings that purport to dictate global licensing terms. These actions risk intruding on other countries' IP systems and effectively overriding domestic policy choices. In practice, such approaches tend to depress patent value, weaken incentives to contribute to standards development, and harm the companies that invest in creating the next generation of foundational technologies. The result is diminished innovation, weaker standards ecosystems, and ultimately reduced public benefit. More direct and sustained U.S. government engagement on these issues is overdue, though there are welcome recent signs of renewed attention. This issue is addressed in greater detail below.

- ***Counterfeiting and Trademark Infringement.*** The continued influx of counterfeit[3] goods into the United States poses serious risks to consumer safety and undermines the integrity of trusted brands. Consumers are often unaware that they are purchasing counterfeit products and may be exposed to harmful components or substandard quality, while legitimate companies suffer erosion of brand value and goodwill. Although the United States has taken important steps—and should continue to do so—to intercept counterfeit goods at the border,[4] a comprehensive strategy must also focus on countries where counterfeit products are manufactured. Source countries must do more to prevent the production and distribution of counterfeit goods within their borders, and addressing these failures should remain a priority in U.S. bilateral and multilateral trade and enforcement engagements. According to the OECD and European Union IP Office (EUIPO), global trade in counterfeit goods amounted to approximately $467 billion in 2021, with approximately 75% of the value coming from China and its territories and approximately 15% coming from Türkiye.[5] Addressing the issue with these two countries alone would go a long way towards solving this scourge on international trade.

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[3] A "counterfeit" is colloquially used to refer to a wide range of knock-off, often low-quality goods. As it relates to trademarks, "counterfeit" has a more narrow and technical meaning that refers to unauthorized usage of another's registered trademark with respect to a good or service. *See* 15 U.S.C. § 1127 ("A 'counterfeit' is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.").

[4] The recent closure of the de minimis loophole for small packages, for example, eliminated one pervasive way that counterfeits were frequently being sent to the United States. *See* Timothy Lyons, *The Time Has Come to Address the De Minimis Loophole*, Vermont L. Rev. (April 24, 2024), https://lawreview.vermontlaw.edu/the-time-has-come-to-address-the-de-minimis-loophole/; *see also* Suspending Duty-Free De Minimis Treatment for All Countries, Exec. Order No. 14,324, 90 Fed. Reg. 37,775 (Aug. 5, 2025), https://www.govinfo.gov/content/pkg/FR-2025-08-05/pdf/2025-14897.pdf.

[5] OECD, *European Union Intellectual Property Office, Mapping Global Trade in Fakes 2025: Global trends and enforcement challenges* 8, 15-16 (2025), https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/05/mapping-global-trade-in-fakes-2025_5c812e3c/94d3b29f-en.pdf.

The United States should also continue to pursue binding commitments on intellectual property through robust IP chapters in bilateral and multilateral trade agreements, while also rigorously monitoring compliance with existing obligations. The ongoing review of the United States–Mexico–Canada Agreement (USMCA) is of particular relevance as is continued oversight of China's implementation of the Phase One agreement, since both contain meaningful IP commitments.[6] Ensuring that these agreements are fully implemented and enforced is essential to protecting U.S. innovators and maintaining the credibility of U.S. trade policy.

At the same time, the United States must move beyond incremental updates and bespoke agreements, and develop a more comprehensive and forward-looking model IP chapter that reflects current geopolitical realities and emerging technologies. Congress should encourage the Administration to advance such a model and incorporate it into an upcoming bilateral trade agreement with a partner that has a sophisticated and well-functioning IP system, allowing it to serve as a high-standard precedent for future negotiations. Key elements of an updated IP chapter should include clear enforcement mechanisms to address infringement, including the availability of injunctions and monetary damages; verifiable commitments by trading partners to prevent the manufacture and export of counterfeit goods at the source; minimum periods of regulatory data exclusivity for new medicines; clear obligations requiring courts to respect the territorial limits of IP rights rather than issuing rulings with significant extraterritorial effect; and binding commitments to cooperate with the United States in addressing the practices of repeat offenders, including China.

Taken together, these actions would signal a renewed commitment by the United States to global leadership on intellectual property after a period of retrenchment. That retreat was perhaps most evident in the United States' initial decision to support a waiver of IP protections under the TRIPS Agreement for COVID-19 vaccines in 2021. While perhaps well-intentioned, that position overlooked the fact that IP protections were not a barrier to vaccine access, and instead weakened the very framework that enabled the rapid development of safe and effective vaccines and the ability to distribute them widely. By endorsing diminished IP standards, the United States missed an important opportunity to demonstrate that strong and predictable IP protections—enabling manufacturing partnerships, voluntary licensing, technology transfer, and international cooperation—are the most effective means of ensuring rapid development, scale-up, and global distribution of medicines and vaccines in future public health emergencies.

I recognize that Chairman Smith and other Members of this Subcommittee urged a different course at the time, and I appreciate that leadership.[7] And although the United States has since moved away from the prior Administration's position, significant work remains. A number of ongoing challenges continue to call for sustained U.S. engagement and leadership, and I urge this Subcommittee to use the tools at its

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[6] For example, Mexico committed to modernize its legal framework governing the entry of generic drugs into its domestic market when regulatory exclusivity periods expire but relevant patents remain in force—a law that the United States has had for decades. To date, however, Mexico has made little progress in implementing the necessary legislative and regulatory changes. In addition, several other IP-related commitments undertaken by Mexico, China, and Canada remain unfulfilled.

[7] Letter from Kevin Brady, Republican Leader, House Comm. on Ways & Means, and Adrian Smith, Republican Leader, Subcomm. on Trade, to Ambassador Katherine C. Tai, U.S. Trade Representative (Oct. 20, 2022), https://waysandmeans.house.gov/wp-content/uploads/2022/10/10.20.22-TRIPS-Waiver-Letter_Final157.pdf; Letter from Rep. Adrian Smith and seven other Members of Congress to the Hon. Katherine Tai, U.S. Trade Representative (May 23, 2022), https://adriansmith.house.gov/sites/evo-subsites/adriansmith.house.gov/files/2022-05-23%20USTR%20oversight%20Final.pdf; *A. Smith: TRIPS Waiver Sets Dangerous Precedent, Puts Future Innovation at Risk* (Jun. 21, 2022), https://waysandmeans.house.gov/2022/06/21/a-smith-trips-waiver-sets-dangerous-precedent-puts-future-innovation-at-risk/.

disposal to ensure that this moment is seized so the United States can once again forcefully advocate for policies that support American innovation and deliver benefits to people and economies worldwide.

Congress Should Support an ITC That Protects Domestic Industries from Infringing Imports, and Provides Meaningful Relief to American Innovators

Within this Subcommittee's jurisdiction, few tools are as important as a strong and effective U.S. International Trade Commission. The ITC's authority to issue exclusion orders against infringing imports is one of the most powerful mechanisms available to protect domestic industries and American innovators from unfair foreign competition. Meaningful exclusionary relief deters infringement, promotes good-faith licensing, and safeguards U.S. investment in research and development.[8] Without effective IP enforcement and credible remedies, incentives to innovate erode, ultimately reducing the future breakthroughs that would benefit consumers and strengthen the U.S. economy.

Despite this, there are recurring efforts to weaken the scope and effectiveness of ITC exclusion orders, particularly through overly expansive interpretations of the statutory "public interest" factor. While narrowly tailored accommodations for truly limited medical research needs or other pressing public concerns may be appropriate in exceptional circumstances, the ITC is often asked to broadly expand the public-interest carve-out far beyond that purpose. In practice, doing so would permit the continued importation and commercial sale of products that infringe U.S. intellectual property, undermining the core function of exclusionary relief. Such carve-outs would create perverse incentives, inviting additional infringement and increasing pressure to expand exemptions further, thereby eroding the integrity of the IP system and weakening the enforcement tools that support a fair, innovative, and competitive domestic industry. Congress should reject efforts to use the "public interest" as a pretext to shield private infringers rather than protect the public.

In addition—although its practices have recently greatly improved on this front— the USPTO continues to use patent invalidation proceedings that risk the collateral cancellation of ITC exclusion orders after they have been entered. Representative Moran has raised concerns about this very dynamic in an ongoing case involving a Chinese state-sponsored infringer.[9] Congress should take steps to prevent the USPTO from cancelling a patent at the urging of a party that was already found to infringe by the ITC.

International Engagement Alone Is Insufficient If We Do Not Also Strengthen the Fundamentals of Our IP System at Home

Protecting U.S. innovators requires a robust legal framework that ensures IP rights are reliable and enforceable. Strengthening domestic IP protections not only safeguards innovation within our borders (from both foreign and domestic infringers), but also amplifies U.S. credibility and leverage when advocating for stronger IP standards abroad. Among other actions, Congress should take immediate steps to bolster the U.S. patent system and reinforce American leadership in innovation through three key measures that enjoy bipartisan, bicameral support and have been refined over several Congresses:

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[8] *See* USPTO and U.S. Dep't of Justice, *Joint Comment on the Public Interest in the Matter of Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof*, ITC Docket No. 3854 (Nov. 25, 2025) ("When patent rights are devalued through ineffective enforcement, the entire innovation ecosystem suffers. Research and development investment declines, venture capital becomes scarce for technology startups, manufacturing flees offshore, and America's technological leadership erodes."), https://www.justice.gov/atr/media/1419496/dl.

[9] Nathaniel Moran, *Why Are Administrative Judges Trying to Help China Steal American Technology?* The Hill (Jun. 13, 2025), https://moran.house.gov/news/documentsingle.aspx?DocumentID=2300.

- **The RESTORE Act (H.R. 1574 / S. 708)**, which would reinstate meaningful injunctive relief for patent holders who prevail in infringement cases, creating a rebuttable presumption in favor of permanent injunctions. Effective injunctive remedies, like ITC exclusion orders, are essential to ensure that infringement is not treated merely as a cost of doing business. Recent judicial interpretations have made injunctions harder to obtain, forcing some U.S. companies to seek relief abroad in jurisdictions such as Germany, the EU, China, and most recently, Brazil—an option often unavailable to smaller firms. The RESTORE Act offers a straightforward solution to restore balance, strengthen enforcement, and protect U.S. innovators of all sizes.

- **The PREVAIL Act (S. 1553 / H.R. 3160)**, which would modernize post-grant review proceedings at the USPTO, reducing duplication with district courts and the ITC and harmonizing standards across forums. By requiring challengers to select a single forum and aligning PTAB claim construction and burden-of-proof standards with federal courts, the PREVAIL Act eliminates redundant proceedings, restores predictability, and enhances transparency. This strengthens patent reliability, supports companies of all sizes, and ensures that U.S. innovators remain competitive globally.

- **The Patent Eligibility Restoration Act (PERA) (H.R. 865 / S. 406)**, which would address restrictive judicial interpretations that have narrowed patent eligibility, ensuring that U.S. patents can protect cutting-edge inventions across all fields of technology. Overly narrow eligibility standards have excluded innovations in areas such as biotechnology, diagnostics and artificial intelligence, weakening incentives to invest in critical research. PERA restores a more predictable and inclusive eligibility framework, reinforcing U.S. leadership in global technology and ensuring that American innovators can compete on equal footing with rivals like China and other economies that do not place similar limitations on their patent systems.

Together, these three measures would clarify the enforceability and scope of U.S. patents, bringing balance and predictability back to IP in support of a robust innovation ecosystem, promoting and protecting investments in research and development, and helping maintain U.S. global technological leadership.

Yet the innovation economy depends not only on patents, but also on strong protections across all areas of intellectual property. As technology evolves, so too must these other legal frameworks that safeguard creators, innovators, and consumers. Congress has several opportunities to strengthen these protections through targeted legislation:

- **The NO FAKES Act (H.R. 2794 / S. 1367)**, which would address the growing threat of unauthorized "deepfakes" by giving individuals the right to have such content removed from third-party platforms and a private right of action against the creator. By tackling one of the most visible harms emerging from AI integration, this legislation helps protect reputations, combat misuse by bad actors, and build public trust in AI technologies.

- **The SHOP SAFE Act (e.g., H.R. 8684 in the 118th Congress)**, which would enhance consumer protections and brand integrity by strengthening U.S. trademark law against counterfeit goods sold through e-commerce platforms. This legislation complements border enforcement efforts and encourages online marketplaces to take greater responsibility for preventing the sale of counterfeit products that undermine U.S. trademarks and consumer safety.

- **Site-blocking legislation targeting copyright piracy websites based abroad**, which would give rights holders a court-mediated process through which they could obtain orders to prevent the dissemination of infringing content by blocking access to overseas websites dedicated to piracy. By

addressing the problem at its source, this approach protects creators, maintains the value of copyrighted works, and supports a fair digital marketplace for both consumers and innovators.

International Engagement and Domestic Legislation Must Work Together to Secure American Leadership on Critical Emerging Issues

The tools and approaches outlined above will work in concert to strengthen U.S. leadership across the technology spectrum. This can be exemplified in two areas: standards development and artificial intelligence.

- **Standards Development and Standard Essential Patents (SEPs)**

Standard-essential patents play a critical role in enabling interoperability and global standards in key technologies such as wireless communications and connected devices. These standards-based technologies are foundational to U.S. competitiveness, and American firms are among the world's leading contributors to standards development.

As part of the standards-setting process, SEP holders typically commit to license their patents on fair, reasonable, and non-discriminatory (FRAND) terms. FRAND commitments are designed to strike a balance: they ensure that implementers can access standardized technology while preserving appropriate compensation for innovators that invest heavily in research, development, and participation in standards bodies.

Importantly, FRAND is not a waiver of patent rights, nor does it automatically eliminate the availability of enforcement remedies. Rather, it is a good-faith commitment to negotiate licenses on reasonable terms. Like any contract-based obligation, FRAND depends on reciprocal good-faith behavior. When parties refuse to negotiate, delay unreasonably, or engage in so-called "hold-out" (by implementers) or "hold-up" (by patent owners), the balance intended by FRAND is disrupted.

- **SEPs and the ITC**

In this context, the ITC plays a critical and appropriate role in mediating disputes between SEP owners and implementers. The ITC does not set royalty rates or adjudicate breach-of-contract FRAND claims. Instead, it serves as an expert forum to determine whether imported products infringe valid and enforceable U.S. patents and whether exclusionary relief is warranted under Section 337.

The availability of ITC exclusion orders is an essential backstop that supports the FRAND framework. By preserving the possibility of meaningful remedies, the ITC encourages both SEP holders and implementers to engage in serious, good-faith licensing negotiations. Without that backstop, implementers may have incentives to delay licensing indefinitely, knowing that the worst outcome may simply be a court-imposed royalty on a handful of patents years later—an outcome that undermines incentives to innovate and participate in standards development. A recent study estimated that the cost of holdouts to innovators in terms of lost revenue in cellular technologies was between $7 - $28 billion in 2021 alone.[10]

There are frequent calls to limit ITC exclusionary remedies in cases involving standard-essential patents (SEPs) on the basis that patent owners have agreed to license them under FRAND terms. However, the FRAND commitment does not require a patent holder to forfeit its legal rights. The ITC's existing public

[10] Bowman Heiden and Justus Baron, *The Economic Impact of Patent Holdout*, 38 HARV. J.L. & TECH. 638, 669 (2024), https://jolt.law.harvard.edu/assets/articlePDFs/v383/2-Heiden-Baron.pdf.

interest analysis provides an appropriate, case-by-case safeguard for SEP disputes, a far superior approach to adopting categorical rules that would impose a per se bar on exclusion orders for SEPs.

Efforts to weaken or eliminate the ITC's authority in SEP disputes would tilt the negotiating landscape, discourage investment in standards development, and ultimately harm U.S. leadership in standards-based industries. Preserving the ITC's role ensures that FRAND remains a balanced framework that rewards innovation while enabling widespread technology adoption.

- **Reasserting U.S. Leadership on Standard-Essential Patents**

In recent years, a number of foreign jurisdictions have pursued increasingly aggressive interventions in SEP policy that threaten to undermine patent value, distort licensing negotiations, and weaken incentives to contribute to future standards. In the European Union, the European Commission recently withdrew its proposed SEP regulation, which would have imposed significant regulatory controls on SEP licensing and valuation. That withdrawal, however, has not ended the matter: the European Parliament has initiated litigation seeking to force the Commission to revive the proposal, underscoring the continuing pressure for centralized, regulatory control over SEP licensing in Europe.

The United Kingdom has followed a similar path. UK authorities are now soliciting input on proposals that mirror many of the EU's earlier regulatory concepts,[11] while UK courts have gone even further by issuing decisions with substantial extraterritorial reach.[12] In particular, recent rulings imposing so-called "interim licenses" on SEP holders—licenses that effectively must be accepted as a condition of seeking relief—risk depriving patent owners of meaningful enforcement rights, including the ability to pursue remedies in other jurisdictions. These developments raise serious concerns about courts and regulators effectively setting global licensing terms and overriding the policy choices of other sovereign nations.

Likewise, China—which has played an active role in shaping SEP policy through its courts and antitrust authorities—remains a significant wildcard. Past efforts by Chinese courts to assert global rate-setting authority illustrate how quickly SEP policy can be weaponized to advance industrial policy objectives.

For example, Chinese courts have issued anti-suit injunctions against holders of U.S. patents in an effort to prevent them from enforcing those patents in U.S. courts, notably in a leading 2020 case before the Wuhan Intermediate People's Court.[13] Although this strategy has ultimately been blunted as courts in other jurisdictions responded to reclaim their authority, the resulting jurisdictional conflicts have imposed significant costs on patent holders, who have faced the prospect of sanctions in multiple forums simply for seeking to enforce their rights. The European Union challenged China's use of these anti-suit

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[11] C4IP submitted comments in response to this solicitation raising numerous concerns with the proposals. Council for Innovation Promotion, *RE: Public Comment on UKIPO SEPs Proposals* (Oct. 3, 2025), https://c4ip.org/wp-content/uploads/2025/10/C4IP-Public-Comment-RE_-U.K.-IPO-Consultation-on-SEPs.pdf.

[12] Douglas Clarke-Williams, *Temperature Rises Between Patent Courts Around Europe Over FRAND Policy*, MLex (Oct. 24, 2025), https://www.mlex.com/mlex/articles/2403404/temperature-rises-between-patent-courts-around-europe-over-frand-policy.

[13] Joff Wild, *The Ericsson v Samsung FRAND Licensing Dispute Explodes Into Life*, IAM (Dec. 29, 2020) (noting that this might be the first instance of a Chinese court issuing an anti-suit injunction against a foreign litigant and that the Wuhan courts in particular have shown an interest in being global leaders in arbitrating FRAND disputes), https://www.iam-media.com/article/ericsson-anti-anti-suit-injunction-edtx; Brief for Sen. Thom Tillis, the Hon. Paul Michel, and the Hon. Andrei Iancu as Amici Curiae in Ericsson Inc. v. Samsung Elecs. Co. Ltd., No. 21-1565 (E.D. Texas) (Apr. 9, 2021) ("The Wuhan court's controversial injunction effectively tried to order a U.S. court to step aside and not determine acceptable patent licensing rates for U.S. patents, based on alleged acts of infringement on U.S. soil, through a lawsuit duly-filed in U.S. courts."), https://ipwatchdog.com/wp-content/uploads/2021/04/31-Tillis-Michel-Iancu-Amicus-Brief1.pdf.

injunctions at the World Trade Organization and prevailed on the principal claims.[14] Notably, however, the United States did not align with the EU in that dispute, instead siding with China—an approach that, like the earlier support for a COVID-19 TRIPS waiver, risked undermining U.S. innovators and failed to defend the territorial integrity of the U.S. patent system.[15] Absent clear and consistent U.S. leadership, there remains a substantial risk that China could again seek to assert itself in this area.

Against this backdrop, the United States must reassert a clear and consistent position in favor of a market-driven, private-sector led, and contract-based approach to SEP licensing, backed by effective and impartial judicial enforcement. The USPTO's recent announcement of a working group on SEPs is a welcome signal in this regard.[16] The working group can help to establish American leadership by adopting policies that guarantee the effective enforcement of standard essential patents, ensuring that all patents—including SEPs—receive equal process and have access to all the enforcement remedies, promoting the use of antitrust law where appropriate to safeguard against efforts to devalue intellectual property, and encouraging private sector and market-driven approaches to facilitate standard setting and patent licensing.

The U.S. government should insist—through trade agreements and otherwise—that foreign governments and courts respect the territorial nature of intellectual property rights and refrain from imposing remedies or regulatory schemes that purport to set global licensing terms or constrain enforcement beyond their borders. SEP disputes are best resolved through good-faith private-sector negotiations between willing licensors and willing licensees, with courts serving as neutral arbiters when negotiations fail—not as global price regulators.

Domestically, Congress also has an important role to play. Reaffirming the availability of injunctive relief in appropriate SEP cases is essential to addressing the growing problem of "hold-out." As with other areas of patent law, reliable access to injunctive relief encourages good-faith negotiations, deters strategic infringement, and helps preserve the incentives that drive U.S. leadership in standards development.[17]

Taken together, renewed U.S. engagement abroad and clear reinforcement of enforcement principles at home are necessary to prevent the erosion of SEP rights, protect American innovators, and ensure that global standards continue to be built on market-driven innovation rather than regulatory fiat.

- **Artificial Intelligence (AI)**

Finally, I want to address artificial intelligence and the critical role that reliable and predictable intellectual property protections will play in ensuring continued U.S. leadership in this transformative field.

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[14] Inbar Preiss and Melissa Ritti, *WTO Arbitrators Hand EU Partial Win Over China's SEP Injunction Policy*, MLex (July 22, 2025), https://www.mlex.com/mlex/articles/2367929/wto-arbitrators-hand-eu-partial-win-over-china-s-sep-injunction-policy.

[15] Mark Cohen and Andrei Iancu, *Op-Ed: Why is the U.S. helping China Undermine Global Innovation?* The Hill (May 20, 2024), https://www.thecentersquare.com/opinion/article_4719053e-16d2-11ef-9086-bbb98eb8383d.html.

[16] *USPTO Announces Standard-Essential Patent Working Group to Renew American Leadership in Technology Standards* (Dec. 29, 2025), https://www.uspto.gov/subscription-center/2025/uspto-announces-sep-working-group.

[17] The importance of remedying patent infringement with injunctive relief was helpfully reinforced by a recent court filing by the USPTO and DOJ. Statement of Interest of the United States in Radian Memory Sys. LLC v. Samsung Elecs. Co., Ltd., Case No. 2:24-cv-1073 (E.D. Tex.) (Jun. 24, 2025), https://www.justice.gov/atr/media/1404506/dl?inline ("Without the possibility of injunctive relief, 'the right to exclude granted by the patent would be diminished, and the express purpose of the Constitution and Congress, to promote the progress of the useful arts, would be seriously undermined.'") (quoting Smith Int'l, Inc. v. Hughes Tool Co., 718 F.2d 1573, 1577-78 (Fed. Cir. 1983) (abrogated on other grounds by eBay Inc. v. MercExchange,L.L.C., 547 U.S. 388, 393-94 (2006)).

As AI becomes increasingly central to economic growth and national security, clear and enforceable IP rights will be essential to sustaining innovation and commercialization. The United States has long led in emerging technologies by pairing technological advancement with a predictable IP framework that protects and rewards investment, risk-taking, and creative effort. AI should be treated no differently.

Importantly, this evolution does not require a wholesale rethinking of U.S. patent and copyright law. At least at this stage, existing legal frameworks are largely sufficient to address the use of artificial intelligence in invention and creative expression. But legal frameworks should not be weakened just because the innovation or creative content relates to or was created with AI. Indeed, American AI creators need the protection of the rule of law just as much as any other creators.

AI systems function as tools—albeit powerful ones—used by human inventors and creators, and both patent and copyright law have extensive precedent recognizing and protecting works and inventions produced with the assistance of tools and technologies. From computer-aided design to software-driven creative processes, U.S. IP law has repeatedly adapted to new technologies without abandoning the central role of human ingenuity. At the same time, IP laws help provide the legal framework for how human ingenuity can continue to be encouraged and rewarded, as demonstrated by the pending court cases assessing whether use of copyrighted materials to train AI models is fair use or requires remuneration.

Likewise, the United States must assertively act to establish itself as the global leader at the intersection of AI and intellectual property policy. If the United States does not articulate a clear, principled, and innovation-friendly approach, other governments will fill that vacuum with more prescriptive models that weaken IP rights or distort global markets to the disadvantage of U.S. innovators. U.S. leadership should emphasize that AI policy must reinforce—not displace—market-based IP systems and respect the foundations of intellectual property.

As Congress considers AI-related policy, it should ensure that new approaches complement, rather than undermine, this well-functioning IP framework. Premature or overly prescriptive regulation risks introducing uncertainty where none is necessary, chilling beneficial uses of AI and discouraging innovation, particularly by startups, smaller firms, and individual creators. Allowing existing doctrines, agency guidance, and case law to continue developing incrementally will preserve flexibility, maintain incentives for innovation, and ensure that AI is deployed toward its most productive and socially beneficial ends.

By reinforcing the principle that AI is a tool that enhances human creativity—and by leading internationally with that approach—the United States can continue to lead in AI innovation while preserving the intellectual property foundations that have long supported American technological leadership.

Conclusion

Intellectual property protection is not an obstacle to innovation or trade—it is a prerequisite. By rebalancing our domestic intellectual property system through targeted legislative reforms, pressing foreign governments to raise their standards, supporting a robust ITC, and resisting efforts to weaken effective enforcement tools, Congress can help secure America's economic future and global leadership.

Thank you for the opportunity to testify. I look forward to your questions.