



December 21, 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Innovation Alliance Comments for Federal Trade Commission Hearings on Innovation and Intellectual Property Policy, Project P181201, Docket No. FTC-2018-0055

Dear Commissioners:

The Innovation Alliance appreciates the opportunity to submit comments to the Federal Trade Commission (the “Commission”) concerning innovation and intellectual property policy in connection with the Commission’s hearings on October 23 and 24, 2018.

The Innovation Alliance is a coalition of research and development-based technology companies representing innovators, patent owners, and stakeholders from a diverse range of industries that believe in the critical importance of maintaining a strong patent system that supports innovative enterprises of all sizes. The Innovation Alliance is committed to strengthening the U.S. patent system to promote innovation, economic growth, and job creation, and we support legislation and policies to help achieve those goals. We appreciate the Commission’s focus on intellectual property (“IP”) policy and the critical role of IP in promoting innovation and competition.

The future of U.S. economic leadership—and Americans’ ability to continue out-innovating the rest of the world—hinge on a strong U.S. patent system. Since its inception, the United States has recognized that a robust intellectual property rights regime is necessary to incentivize innovation, reward successful ideas, and drive economic and technological progress. Appreciating their importance, the Founders chose to enshrine IP rights directly in the Constitution, empowering Congress to establish a patent system that continues today to serve as a catalyst for American ingenuity and entrepreneurialism.¹

¹ U.S. Const. art. I, § 8, cl. 8.

I. The Role of Strong Patents in the Innovation Ecosystem

Patents grant inventors “exclusive” property rights in their inventions²—allowing inventors to exclude others from making, using, selling, or importing their patented innovation for a limited period of time, while at the same time requiring detailed publication of their new inventions.³ The right to exclude is fundamental to all forms of private property, and in the case of patents, it produces three key pro-innovation effects.

First, patents incentivize innovation and encourage the risky pursuit of new ideas. By allowing inventors to control the use of their inventions, patents provide an asset to inventors—a financial incentive that rewards a successful innovation—allowing an innovator to sell her or his sought-after idea or license it to others.

The ability to obtain patent rights in inventions also fuels significant investment in research and development (“R&D”) in new technologies. Innovators must commit substantial resources up front to develop their ideas, without any guarantee of a return on their investment. Without patent protections, innovators simply would not invest significant capital in developing new technologies if others could copy these technologies for free once they were developed. Strong patent rights, however, incentivize innovators to shoulder these risks and devote considerable resources to the pursuit of transformative new ideas. When innovators succeed, those patent rights strengthen their ability to recover their investments. Having secured fair compensation for their risk-taking endeavors, innovators are then incentivized to reinvest in more R&D, paving the way for new discoveries.

Second, patents facilitate follow-on innovation by requiring inventors to publicly disclose their technologies in exchange for the exclusivity of the patent right.⁴ Patents are public documents that detail the patented technology, allowing other innovators to build on these inventions and pursue new technologies based on that foundation. Public disclosure of innovative ideas distinguishes patents from other forms of intellectual property, like trade secrets, that protect intellectual property but do not encourage further innovation.

Third, patents function as what former U.S. Patent and Trademark Office (“USPTO”) Director David Kappos has called “the currency of innovation.”⁵ The open innovation model fostered by strong patent rights encourages innovators to collaborate with one another, resulting in better products and services being swiftly brought to market. For this collaboration to work, innovators must be able to capture the contributions made by each collaborator on a given venture. Patents act as this “currency” that identifies and gauges the specific contribution each collaborator brings to a joint effort. In doing so, patents ensure that an invention can be freely bought, sold, or licensed, allowing patent owners to reap the benefit of their invention efficiently, while transferring their invention directly to the party best positioned to commercialize it for consumer or industry use.

² *Id.*

³ See 35 U.S.C. § 271(a).

⁴ David J. Kappos, *Why America's Patent System is Not Killing Innovation*, FORTUNE (May 8, 2015), <http://fortune.com/2015/05/08/why-americas-patent-system-is-not-killing-innovation/>.

⁵ *Id.*

A strong patent system thus creates a “virtuous” cycle of innovation in which innovators are properly incentivized to pursue new ideas, share their successful inventions with the public, openly collaborate with other innovators, and reinvest in even more R&D—which then leads to additional discoveries and accelerates consumer access to new technologies. This cycle has a tremendous impact on the entire U.S. economy: according to a 2016 USPTO Report, IP-intensive industries in general contribute over \$6.6 trillion in value annually to the U.S. economy, with IP-based activity constituting more than one-third of U.S. GDP.⁶ These industries support over 45 million jobs each year, roughly 30 percent of all jobs in the U.S. economy.⁷

Strong IP rights facilitate and incentivize long-term, R&D-heavy innovations. Even with costly R&D, new technologies can take years, if not decades, to advance. For example, each “G” of wireless technology represents at least a decade of intense research, development, and standard-setting, all requiring massive investments of time and resources. The same is true of new prescription medications, which take years to evolve from the lab bench through clinical trials to FDA approval and finally to the local pharmacy, assuming they ever even make it out of the lab, which most do not. These advancements require the promise of strong IP rights to ensure that inventors will make the investments, and have the access to capital, necessary to innovate.⁸

Innovative companies that generate revenue by developing and licensing new technologies depend on strong IP to incentivize innovation, recoup their investment in innovative R&D, and earn revenue that can be reinvested into further R&D. Other companies may employ business models that generate revenue from advertising or data sales, but companies that depend on licensing revenue to fund expensive and risky R&D rely heavily on a strong patent system that will protect their invention from infringement and copying.

For the patent system to fully incentivize innovation and entrepreneurship, innovators must be confident that their patent rights will be respected and reliably enforced once their ideas are shared with the world. However, despite intellectual property’s deep constitutional roots and the importance of strong patent rights to American innovation leadership, the U.S. patent system has been weakened significantly. First, a flurry of Supreme Court cases over the last decade has made it increasingly difficult to obtain, enforce, and defend patent rights. In four separate cases, the Supreme Court has invalidated patents on the ground that they do not claim subject matter that is eligible for a patent under 35 U.S.C. § 101.⁹ These cases have collectively converted Section 101 from a general statement of patentable subject matter into a broad threshold of

⁶ ECON. & STATISTICS ADMIN. & U.S. PATENT & TRADEMARK OFFICE, INTELLECTUAL PROPERTY AND THE U.S. ECONOMY: 2016 UPDATE, at ii (2016), <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>.

⁷ *Id.*

⁸ Studies have shown that approval of a single patent application increases a startup’s probability of securing venture capital funding by 53%. See Joan Farre-Mensa, Deepak Hegde & Alexander Ljungqvist, *The Bright Side of Patents* 3 (Nat’l Bureau of Econ. Research, Working Paper No. 21959, 2016).

⁹ *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014); *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013); *Mayo Collaborative Servs. v. Prometheus Labs. Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010).

patentability, conflating it with the statutory tests of novelty (35 U.S.C. § 102) and non-obviousness (35 U.S.C. § 103), dramatically narrowing the scope of patentability. This has led to patent invalidation at an unprecedented rate, particularly for patents involving computer-implemented technologies, medical testing and diagnosis, and drug administration.¹⁰

In addition to raising the threshold of patentability, other cases have made it harder to defend and enforce patents. In one significant case, the Supreme Court abandoned the general rule that courts should issue permanent injunctions when a valid patent is found to be infringed.¹¹ In the six years following *eBay, Inc. v. Merc Exchange LLC*, the rate of permanent injunctions granted as a percentage of all patent case filings dropped precipitously, from over 1.8 percent to less than a quarter of one percent.¹²

Other cases have changed the statutory standards of patentability, making it easier to invalidate patents as obvious or indefinite.¹³ In the three years following the *KSR International Co. v. Teleflex Inc.* decision alone, district court findings of obviousness in patent cases jumped from six percent to over 40 percent.¹⁴ The courts have also made it more difficult to prove infringement. For example, in *Global-Tech Appliances, Inc. v. SEB S.A.*,¹⁵ the Supreme Court held that liability for induced infringement requires that the inducer must know that the acts induced constitute infringement of a patent. Previously, patent owners only needed to prove that the inducer intended to induce acts that ultimately amounted to direct infringement. In the wake of these decisions, more patent users act as though it is permissible—and even reasonable—simply to infringe a patent holder’s right rather than pay for its use. This growing practice is known as “efficient infringement.”

Congress also weakened patent rights when it passed the 2011 America Invents Act (“AIA”) and created post-grant review proceedings before the Patent Trial and Appeal Board (“PTAB”). This administrative tribunal has terminated patents at an alarmingly high rate. Over 80 percent of petitions that reach a final written decision by the PTAB have at least some claims invalidated, and over 60 percent of such petitions result in all claims being invalidated.¹⁶ These seriously troubling developments spurred one former chief judge of the U.S. Court of Appeals

¹⁰ Although the Innovation Alliance supports reforms that would restore Section 101 as a broad filter for patentability, we understand that Section 101 is not a subject of these hearings and that the Commission plans to hold a future hearing specifically concerning Section 101 and antitrust. We look forward to engaging with the Commission on these issues more fully in the coming months.

¹¹ *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006).

¹² Kirti Gupta & Jay P. Kesan, *Studying the Impact of eBay on Injunctive Relief in Patent Cases*, (Dec. 21, 2016) (unpublished Univ. of Ill. Coll. of Law Legal Studies Research Paper No. 17-03), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2816701.

¹³ *See, e.g., Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898 (2014); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

¹⁴ Ali Mojibi, *An Empirical Study of the Effect of KSR v. Teleflex on the Federal Circuit’s Patent Validity Jurisprudence*, 20 ALB. L.J. SCI. & TECH. 559, 582-583 (2010).

¹⁵ 563 U.S. 754 (2011).

¹⁶ Hon. Paul R. Michel & Matthew J. Dowd, *Innovation and U.S. Patent Law*, in ENABLING THE FOURTH INDUSTRIAL REVOLUTION 3 CPI ANTITRUST CHRON. 20, 22 (June 2018), https://www.competitionpolicyinternational.com/wp-content/uploads/2018/06/AC_JUNE.pdf.

for the Federal Circuit to declare PTAB proceedings to be patent “death squads killing property rights.”¹⁷

All told, the deck is now firmly stacked against patent owners, making it harder for inventors and entrepreneurs to patent their ideas, attract investors for their ideas, and defend their constitutionally-protected patent rights. Unsurprisingly, the U.S. patent system is in the midst of a steady and significant decline. According to the U.S. Chamber of Commerce’s Global Innovation Policy Center’s IP Index, the United States dropped to twelfth place worldwide in patent system strength in 2018, down from tenth place last year and first every year before that.¹⁸ In the 2018 Bloomberg Innovation Index, the United States fell out of the top ten most innovative countries for the first time since that Index began in 2013.¹⁹

As the United States falls, foreign competitors are on the rise. Most notably, China is investing an unprecedented level of resources into next-generation technologies and pursuing an industrial policy focused on elevating itself as the global technology leader—in a direct challenge to the United States. As foreign competitors continue to increase their stature as innovation economies, they are further strengthening their patent systems to capture a greater share of global investment capital. Congress and the Administration must reverse these misapplications of intellectual property law to ensure that the United States remains committed to a robust pro-innovation economy—grounded in a strong patent system—in order to attract premium innovators and remain competitive globally.

II. The Procompetitive Effects of Strong Patent Rights

Just as strong patent rights incentivize innovation, they also generate competition. Sound antitrust policy that encourages innovation by recognizing the procompetitive effects of patenting is therefore critical to the global innovation ecosystem. As recently recognized by Makan Delrahim, Assistant Attorney General for the Department of Justice’s Antitrust Division, when competition policy is “applied thoughtfully” and “informed by economic experience,” it can complement IP policy to “yield exciting results: a strong and dynamic economy with rich and varied choices for consumers.”²⁰ Simply put, an IP system that rewards risk-taking by enabling innovators to monetize their discoveries incentivizes those innovators, and those who back them, to compete to develop new technologies and products in the first place.

¹⁷ See Rob Sterne & Gene Quinn, *PTAB Death Squads: Are All Commercially Viable Patents Invalid?*, IPWATCHDOG (Mar. 24, 2014) (quoting Judge Randall Rader at the American Intellectual Property Law Association annual meeting in October 2013), <http://www.ipwatchdog.com/2014/03/24/ptab-death-squads-are-all-commercially-viable-patents-invalid/id=48642/>.

¹⁸ See U.S. CHAMBER OF COMMERCE, GLOB. INNOVATION POLICY CTR., INTERNATIONAL IP INDEX 35, fig. XI (6th ed. 2018), http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf.

¹⁹ See Michelle Jamrisko & Wei Lu, *The U.S. Drops Out of the Top 10 in Innovation Ranking*, BLOOMBERG (Jan. 22, 2018), <https://www.bloomberg.com/news/articles/2018-01-22/south-korea-tops-global-innovation-ranking-again-as-u-s-falls>.

²⁰ Makan Delrahim, Assistant Attorney Gen., Competition, Intellectual Property, and Economic Prosperity, Remarks Before the China Intellectual Property Law Society and the Peking University Intellectual Property Alumni Association (Feb. 1, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-us-embassy-beijing>.

In addition to incentivizing innovation, the ability to freely buy, sell, or license patented technology serves multiple procompetitive roles. First, inventors are often not the party best positioned to commercialize an invention. A university researcher or garage inventor, for example, may lack the interest, expertise, or resources to manufacture and sell their invention. Patent licensing therefore promotes efficient commercialization by allowing the inventor to license his or her invention to another person or entity who can bring the invention to market.

Second, patents “provide producers with incentives to compete with one another to purchase or license inventions.”²¹ Patent licensing facilitates the ability of patent owners to control who uses their technology in their products, and encourages implementers to compete for those licenses. Producers of products that practice patented technology have incentives to develop the very best products to implement that technology and bring it to market for consumer use.

Because patents provide some measure of market exclusivity, some commentators have encouraged antitrust authorities, including the Department of Justice (“DOJ”) and the Commission (collectively, the “Agencies”), to use antitrust enforcement as a mechanism to regulate patent licensing agreements. This effort has focused primarily on patent licensing in the context of technology standards development. The development of technology standards is an exclusively private endeavor undertaken by members of standards-development organizations (“SDOs”), which can include companies, nonprofits, and universities. SDOs can promote competition by providing a forum within which innovators can compete against each other to demonstrate the superiority of their technology in order to win its inclusion in a standard. Members of an SDO who contribute their technology to a standard typically agree to license their standard-essential technology on fair, reasonable, and non-discriminatory (“FRAND”) terms. When technology owners compete to have their technology included in a standard—and to negotiate licenses that are consistent with a FRAND commitment—innovators and the implementers who incorporate their technology into consumer products are properly incentivized to develop and commercialize the very best technology.

III. Foreign Antitrust Challenges

Over the past decade, antitrust enforcers around the world, particularly in Asia, have increasingly overlooked, and aggressively undermined, the pro-innovation, pro-competition value of intellectual property rights. Antitrust authorities in China, Korea, and Taiwan, for example, have brought actions against multiple U.S. companies in connection with their patent licensing activities. These cases deploy antitrust law as a tool of industrial policy to counter U.S. competitive advantages and undermine U.S. patent rights by subjecting American companies to investigations that lack due process protections. The clear goal of these foreign antitrust authorities is to transfer U.S. patented technology to their domestic companies, to secure more favorable licensing terms for their domestic companies, or to insulate those companies from U.S. competition.

²¹ Daniel F. Spulber, *Innovation Economics: The Interplay among Technology Standards, Competitive Conduct, and Economic Performance*, 9 J. COMP. L. & ECON. 777, 802–03 (2013).

In order to discourage our foreign competitors from abusing their antitrust laws in furtherance of their industrial ambitions, the Innovation Alliance encourages the Agencies to recognize and facilitate the procompetitive effects of intellectual property and to avoid policies and statements that fuel their foreign counterparts' ability to use their competition laws as instruments of industrial and trade policy. Over the past decade, for example, the Commission has increasingly adopted the view that patent licensing activity should be subject to antitrust enforcement actions to regulate the terms under which patent owners license their technology to avoid so-called "hold-up" by patent owners who refuse to license their technology in an effort to extract higher royalties from users of their patents.

Historically, the Agencies have recognized the procompetitive virtues of patent licensing. In 1995, the Agencies jointly issued Antitrust Guidelines for the Licensing of Intellectual Property (the "1995 Guidelines"),²² which emphasize three foundational principles governing U.S. antitrust enforcement policy in this area. First, the Agencies treat intellectual property as being essentially comparable to any other form of property for the purpose of antitrust analysis. Second, the Agencies do not presume that IP creates market power in the antitrust context. Market power—or even a monopoly—that is solely "a consequence of a superior product, business acumen, or historic accident does not violate the antitrust laws" or impose on the IP owner an obligation to license the use of that property to others. Third, IP licensing is viewed as generally procompetitive. The 1995 Guidelines recognize that IP licensing revenue increases the incentive for the creation of more IP, and thus promotes greater investment in R&D. The 1995 Guidelines properly balance the policy goals of antitrust with the innovative aims of IP, furthering "the common purpose of promoting innovation and enhancing consumer welfare."²³

Unfortunately, like our overseas competitors, over the last decade U.S. antitrust authorities have departed from the foundational principles expressed in their Guidelines.²⁴ For example, the Agencies have favored restrictions on the availability of injunctions for patent holders²⁵, supported the Commission's enforcement actions have challenged patent holders'

²² FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, *Antitrust Guidelines for the Licensing of Intellectual Property* (1995), <https://www.justice.gov/atr/archived-1995-antitrust-guidelines-licensing-intellectual-property#t21>.

²³ *Id.* § 1.0

²⁴ See generally Joshua D. Wright & Hon. Douglas H. Ginsburg, *Whither Symmetry? Antitrust Analysis of Intellectual Property Rights at the FTC and DOJ*, 9 COMPETITION POL'Y INT'L 41, 41, 47 (Autumn 2013), http://www.masonlec.org/site/rte_uploads/files/GAI/Readings/Economics%20Institute/Wright%20and%20Ginsburg_Whither%20Symmetry%20%20CPI%20Reprint.pdf.

²⁵ See, e.g., *Oversight of the Impact on Competition of Exclusion Orders to Enforce Standard-Essential Patents: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 2 (2012) (statement of the Fed. Trade Comm'n), <http://www.ftc.gov/os/testimony/120711standardpatents.pdf>; Brief for Fed. Trade Comm'n as Amicus Curiae Supporting Neither Party at 16, *Apple Inc. v. Motorola, Inc.*, Nos. 2012-1548 & 2012-1549 (Fed. Cir. Dec. 5, 2012) (stating that "[w]hen a patentee makes a FRAND commitment to an SSO, the irreparable harm analysis, balance of harms, and the public interest will, as here, generally militate against an injunction"); Third Party United States Federal Trade Commission's Statement on the Public Interest filed on June 6, 2012 in *In re Certain Wireless Communication Devices, Portable Music & Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, <http://www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf>; Third Party United States Federal Trade Commission's Statement on the Public Interest filed on June 6, 2012 in *In re Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752, <http://www.ftc.gov/os/2012/06/1206ftcgamingconsole.pdf>. However, just this month, DOJ announced its withdrawal from its 2013 "Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary

pursuit of injunctions as antitrust violations²⁶, and approved the Commission expanding the scope of Section 5 of the Federal Trade Commission Act to classify a breach of a FRAND contractual commitment as an antitrust violation.²⁷

These efforts follow directly from the so-called patent “hold-up” theory. However, the theory has no basis in law and no empirical economic support.²⁸ Indeed, Assistant Attorney General Delrahim recently criticized proponents of this theory for “principally rely[ing] on models devoid of economic or empirical evidence that hold-up is a real phenomenon, much less one that harms competition.”²⁹ But even if the “hold-up” theory had some empirical basis, a party aggrieved by licensing negotiations concerning standard-essential patents can always seek a remedy for breach of contract or pursue another common law cause of action, rather than resorting to the “blunt instrument” of antitrust law.³⁰

Moreover, while U.S. competition regulators have largely adopted the “patent hold-up” theory—recent efforts by DOJ leadership to adjust those views notwithstanding—they have ignored the more serious risk to innovation of “patent hold-out.” Patent hold-out arises when companies that use patented technologies in their products (“implementers”) threaten to underinvest in the implementation of a standard, or threaten not to pay for a license at all, unless their artificially low royalty demands are met. Innovators often have little recourse in such a situation. Patents are not self-enforcing; patent holders must pursue expensive, risky patent infringement litigation against implementers who are “holding out” in order to vindicate their rights. Additionally, innovators often must commit substantial resources up front to the development of a technology without any guarantee of success. If the implementers of that technology hold out, the innovator might be unable to recoup the investments that were needed to create and develop the technology in the first place. At least some implementers, on the other hand, adopt new technologies after other market actors—that is, after royalties are already set. For example, once one implementer adopts a technology, all other implementers will know what

F/RAND Commitments,” which was entered into jointly with the USPTO. See Makan Delrahim, Assistant Attorney Gen., “Telegraph Road”: Incentivizing Innovation at the Intersection of Patent and Antitrust Law, Remarks at the 19th Annual Berkeley-Stanford Advanced Patent Law Institute (Dec. 7, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-19th-annual-berkeley-stanford/>. By withdrawing and expressing plans to renegotiate the agreement, the Antitrust Division clarified that “enforcement agencies . . . should not place a thumb on the scale against an injunction in the case of FRAND-encumbered patents.” *Id.*

²⁶ See, e.g., *In re Motorola Mobility LLC*, File No. 121-0120, 2013 WL 3944149 (F.T.C. July 23, 2013); *In re Robert Bosch GmbH*, File No. 121-0081, 2012 WL 5944820 (F.T.C. Nov. 21, 2012).

²⁷ See, e.g., Statement of the Federal Trade Commission, *In re Negotiated Data Solutions LLC*, File No. 051-0094 (Jan. 23, 2008), <https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122statement.pdf>.

²⁸ See David J. Teece, *Pivoting Toward Schumpeter: Makan Delrahim and the Recasting of U.S. Antitrust Towards Innovation, Competitiveness, and Growth*, 32 ANTITRUST 32, 37 (Summer 2018), https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/Summer18-TeeceC.authcheckdam.pdf.

²⁹ Makan Delrahim, Assistant Attorney Gen., The “New Madison” Approach to Antitrust and Intellectual Property Law, Remarks Before the University of Pennsylvania Law School 9 (Mar. 16, 2018), <https://www.justice.gov/opa/speech/file/1044316/download>.

³⁰ Makan Delrahim, Assistant Attorney Gen., The Long Run: Maximizing Innovation Incentives Through Advocacy and Enforcement, Keynote Address Before the Leadership Conference on IP, Antitrust, and Innovation Policy (Apr. 10, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-keynote-address-leadership-conference>.

royalty rate that technology will command. Future implementers, therefore, face a reduced risk of hold-up, because the royalties are already fixed.

U.S. antitrust regulators' unfounded concerns over "patent hold-up" have undermined efforts to encourage overseas enforcement authorities to pursue their own evidence-based approach to antitrust enforcement, to the detriment of U.S. innovation. Fair, evidence-based antitrust enforcement protects both inventors and users of patented technology from unfair market practices while ensuring that contributors to global technology standards compete vigorously with one another to develop and commercialize the best technology.

The Innovation Alliance urges the FTC—and the entire U.S. government—to set the example for global antitrust authorities when it comes to the treatment of IP licensing disputes. Strong IP protections that reward innovation and sound antitrust policies that foster the efficient transfer of patented technology work in tandem to balance the imperative of incentivizing invention with the need to protect consumers from harm. U.S. antitrust law and policy must actively encourage, not thwart, the innovation enterprise to ensure that the United States maintains its role as the leading global innovator.

Sincerely,

Brian Pomper
Executive Director

