

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Subcommittee Hearing, “Standard Essential Patent Disputes and Antitrust Law”
July 30, 2013**

When inventors and developers are willing to license their technologies to one another at reasonable rates, the exchange of ideas benefits us all. That principle is especially true in the standard-setting environment, in which innovators come together to agree on a set of standards so that their products can interoperate. The development of industry standards have brought us sophisticated mobile devices and shaped our modern communications networks. The cross-licensing of technology is increasingly important in today’s interconnected world.

Unfortunately, in recent years we have seen an escalation in disputes concerning patents that patent holders have agreed to contribute for use in standardized technology; so-called “standard-essential patents.” In some cases, companies that agreed to contribute their invention to a standard are using others’ reliance on that standard as leverage to negotiate higher royalty rates or exclude competitors. Such “patent hold-up” harms consumers by limiting competition and driving up the price of new technologies. It also undermines the standard-setting process, which often relies on a mutual commitment that all participants contributing to the standard will license their contribution to other users on fair, reasonable, and non-discriminatory terms.

In recent years, this Committee has taken steps to increase its oversight on this consumer and competition issue. Last March, I wrote to the administration to express concern that exclusion orders issued by the U.S. International Trade Commission (ITC) may be misused to exclude rival technologies when the holder of a standard-essential patent subject to licensing commitments fails to reach agreement on licensing terms. Other Senators, on both sides of the aisle, also raised concerns about this issue. I convened a full Committee hearing in July last year to address this matter with the Federal Trade Commission (FTC) and Department of Justice (DOJ).

The ITC has a statutory mechanism to consult with the antitrust authorities in appropriate cases to ensure that exclusion orders are not being used in a manner that poses a threat to competition and innovation. I am pleased that, since our conversations, the FTC and Department of Justice have filed advisory comments with the ITC on this issue both generally and in specific cases. The ITC has the authority under its public interest test to limit the use of exclusion orders when they would negatively impact competition. I continue to urge the ITC to use this authority in appropriate circumstances to ensure that the ITC’s enforcement mechanism is not being misused in a manner that stifles competition.

The federal antitrust authorities have also considered licensing practices related to standard-essential patents in recent antitrust investigations, including the potential anticompetitive effects when holders of standard-essential patents seek to enforce those patents through injunctive relief instead of negotiating licenses with other users. I welcome this oversight by the antitrust authorities and encourage their continued vigilance on this matter.

This issue forms part of a larger puzzle as we seek to promote a strong, effective, and efficient patent system that fosters innovation and promotes economic growth. Last Congress, this

Committee reported and saw enacted the greatest changes to our patent system in decades. The Leahy-Smith America Invents Act made much-needed improvements to bring our patent system into the 21st century, but there is still more to be done, especially to address the growing problem of patent trolls that are plaguing so many businesses. I am continuing to work on a bipartisan, bicameral basis to develop legislation that will target the abuse of patent trolling, while ensuring that high-quality patents are protected and can be enforced.

Oversight of the enforcement of standard-essential patents will also help to ensure that our patent system remains fair and effective, so that it can be used to promote innovation and appropriate collaboration. I am pleased that the Subcommittee is continuing this oversight and thank the witnesses for their testimony.

#