

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
United States Senate  
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In recent months, we have seen a growing number of companies engage in what some are calling the next wave in the "tech patent wars." Companies that previously cross-licensed their technologies with other companies in the market are increasingly seeking to block their competitors instead. This has the potential to harm consumers by preventing access to their favorite devices.

I have long championed the strong enforcement of our intellectual property laws because enabling inventors to profit from their work encourages innovation. Patent protection is particularly important for Vermont: the Intellectual Property Organization recently announced that in 2011 Vermont again received the most patents per capita of any state.

When inventors and developers are willing to license their technologies to one another at reasonable rates, the cross-fertilization of ideas benefits us all. But I am concerned that the recent trend of seeking exclusion orders from the International Trade Commission (ITC), rather than negotiating and seeking license fees, may have the opposite effect.

Today's hearing focuses on the enforcement of standard-essential patents at the ITC. Standard setting is important because it allows different companies to have their products interoperate, giving us important developments like the 3G technology used in cellular phones. To participate in the standard setting, patent owners often agree to license their patents to anyone on reasonable terms.

In March, I wrote to the administration expressing concern that ITC exclusion orders can be misused to prevent rival technologies when holders of standard-essential patents fail to reach agreement on licensing terms. These orders can pose a significant threat to competition and innovation, especially where competitors have developed products based on a mutual commitment to license standard-essential patents on reasonable terms.

Senator Lee and other Senators on this Committee have since written to the ITC expressing similar concerns. As with patent reform, this is a bipartisan issue. We have an interest on both sides of the aisle in ensuring the patent laws promote innovation and competition.

The Department of Justice and the Federal Trade Commission play a vital role in protecting consumers and competition by enforcing our nation's antitrust laws. They also have an important role in advising on antitrust issues. Congress recognized that role when it required the ITC to consult with the FTC and DOJ on competition issues that would be raised by the issuance of an exclusion order.

The testimony of today's witnesses will give the Committee a chance to further explore the competitive impact of ITC exclusion orders and whether more needs to be done to ensure consumers are not the victims of the tech patent wars.

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