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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

VIA ELECTRONIC TRANSMISSION

October 21, 2019

The Honorable William Pelham Barr
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Barr and Assistant Attorney General Delrahim:

We write to encourage the Department of Justice to work with the United States Patent and Trademark Office (USPTO) to provide guidance on remedies for infringement of standard-essential patents (SEPs) subject to fair, reasonable, and nondiscriminatory (FRAND) licencing commitments.

We applaud the Antitrust Division's decision to withdraw its assent to the 2013 joint statement by the Department and the USPTO, entitled "Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments." We share the concerns articulated by Assistant Attorney General Delrahim in his "Telegraph Road" remarks last December, as well as his stated goal of doing everything possible to preserve the fundamentals that encourage innovation. The 2013 Policy Statement created unnecessary confusion, emboldened strategic infringers, and had the potential to discourage investment by American companies, innovators, and entrepreneurs in critical technologies. These technologies will be key to U.S. leadership in strategic areas like 5G, the Internet of Things, and artificial intelligence. We were also encouraged by Assistant Attorney General Delrahim's stated desire to work with the USPTO to draft a new joint statement that better provides clarity and predictability regarding the balance of interests at stake.

Since your decision last December, however, stakeholders have expressed concerns regarding a growing divide between the Department, the Federal Trade Commission, and the USPTO about the role antitrust law should play in addressing SEPs and FRAND commitments.

Given these concerns, we ask that you work with the USPTO to develop a revised policy statement concerning the licensing and enforcement of patented innovations that have been committed to technological standards. Any revised policy statement should ensure a proper balance between protecting all innovators and consumers. As Under Secretary of Commerce for Intellectual Property and

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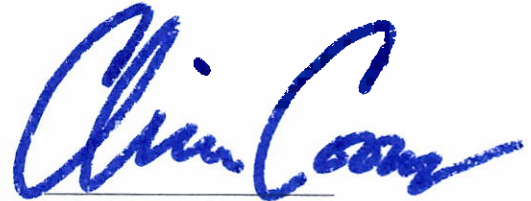
Director of the USPTO Andrei Iancu recently noted, any new policy “must ensure balance between patent owners and potential licensees, so that patented innovations can continue to contribute to voluntary consensus standards organizations thereby continuing to maximize benefits to consumers.” We are confident in your ability to work with the USPTO to develop a revised policy statement that strikes the appropriate balance, and we stand ready and willing to support you in that effort.

We thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact our offices.



Thom Tillis
United States Senator

Sincerely,



Christopher A. Coons
United States Senator