



Via electronic mail: SCO@nist.gov

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National Institute of Standards and Technology
Standards Coordination Office
100 Bureau Drive, Mailstop 2100
Gaithersburg, Maryland 20899-2100

RE: U.S. Government National Standards Strategy for Critical and Emerging Technology: Implementation Roadmap

To Whom It May Concern:

The Alliance for Automotive Innovation (“Auto Innovators”) is pleased to submit the following comments on the U.S. Government National Standards Strategy for Critical and Emerging Technology: Implementation Roadmap (“Roadmap”). Auto Innovators appreciates the opportunity to share the automotive industry’s perspectives on the importance of fair, reasonable, and non-discriminatory (“FRAND”) licensing of standard essential patents (“SEPs”) as a key objective for the National Standards Strategy.

Auto Innovators represents the manufacturers that produce most of the cars and light trucks sold in the U.S., original equipment suppliers, technology companies, battery makers, and other value-chain partners within the automotive ecosystem. Representing approximately 5 percent of the country’s GDP, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector.

As inventors and implementers, automotive companies rely on strong technical standards to deliver innovative vehicle technologies to consumers and to meet their environmental and safety goals. The ability to license patents declared essential to technical standards on FRAND terms is critical to enabling automotive companies to deploy innovative technologies that are transforming personal mobility and helping to create a cleaner, safer, and smarter transportation future. FRAND terms prevent anticompetitive behavior by balancing the market power that SEP holders have with the needs of automotive companies to license and implement common standardized technologies such as internet connectivity, increased computing capacity, broadband cellular networks, or electric vehicle charging.

While the Roadmap notes that the U.S. Patent and Trademark Office (“USPTO”) “plans to continue to engage with foreign governments to provide balance and efficiency around FRAND

licensing,” it remains important that the U.S. Government explore best practices for standards setting organizations (“SSOs”) and standards development organizations (“SDOs”) to ensure that SEP holders adhere to stated FRAND commitments, which include licensing for all willing implementers up and down the supply chain. Automakers typically rely upon their suppliers to determine what technical standards to integrate in the components they provide to them and to obtain any required licenses to implement those standards. Unfortunately, some SEP holders, including patent pools or platforms, license only to end-users, largely for the purpose of assessing royalties on the value of the entire vehicle instead of the value of the component that integrates the technical standard. This blatant violation of FRAND obligations is extremely disruptive to established and mature automotive supply chains. A worthy objective for the U.S. Government’s engagement with SSOs and SDOs, as well as for the USPTO’s engagement with foreign governments, is strengthening FRAND licensing by having such organizations agree to enforce the commitment for SEP holders to license to all willing implementers. This would provide greater predictability for all participants in standards setting and development processes, as well as encourage greater adoption of technical standards.

The assessment of royalties on the value of the entire product instead of the value of the component that integrates the technical standard is particularly problematic in the automotive context. For example, SEP patent holders, including patent pools or platforms, in the wireless telecommunications space appear to justify a higher licensing fee for the use of 4G and 5G connectivity in a vehicle (as compared to other consumer products) based on the technologies that will be enabled or enhanced through the connectivity. However, only a tiny fraction of the value of these new vehicle technologies comes from the simple act of connecting the vehicle. The real value comes instead from the design and development of sophisticated new vehicle technologies, capabilities, and services by automotive companies. Strong guidance from the U.S. Government that such licensing fee valuations are not properly within the boundary of U.S. patent rights and that SEP holders must consider apportionment when determining a FRAND rate would be welcome.

As part of the USPTO’s engagement with foreign governments “to provide balance and efficiency around FRAND licensing,” Auto Innovators makes the additional recommendations:

- Evaluate what the U.S. government can do to address potential violations of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) when foreign courts intend to set rates for manufacturing and sales activity in the U.S.;
- Explore proposals that can help ensure that FRAND licensing discussions occur before litigation, including whether injunctive relief is a proper remedy;
- Consider reasonable pricing and licensing for the smallest salable patent practicing unit as a vital component to the advancement of automotive and mobility technologies, given that added costs from patent stacks can discourage companies from integrating new technologies into vehicles;

- Provide safe harbors for licensee negotiation groups (“LNGs”) formed by SEP implementers to provide a balance to the horizontal price agreements among competitors inherent in patent pools or platforms;
- Support the proposed European Commission SEP regulation, which would increase transparency for both SEP patent holders and implementers; and
- Consider complementary action in the U.S. to align with the European Union in dealing with FRAND determinations and to harmonize implementation of patent laws across borders.

Auto Innovators appreciates the opportunity to provide input on the U.S. Government National Standards Strategy for Critical and Emerging Technology: Implementation Roadmap. We look forward to further engagement on the important topics raised by the USG NSSCET and its implementation.

Sincerely,

A handwritten signature in cursive script that reads "Tara Hairston".

Tara Hairston
Senior Director, Technology Policy