Standard-Essential Patents: Prosecution and Enforcement

by Hengyi Jiang and Justin M. Philpott, Banner Witcoff, with Practical Law Intellectual Property & Technology

Maintained • USA (National/Federal)

This Practice Note provides an overview of standard-essential patents (SEPs), including strategies for drafting, prosecuting, and enforcing SEPs. This Note addresses considerations for companies involved in standardized technologies and highlights the benefits of proactive approaches, such as early retention of patent counsel having specific technical expertise, timely use of provisional application filings, and preparation of claim charts to demonstrate the essentiality of patent claims to facilitate licensing and identify infringement.

Pursuing and enforcing **standard essential patents** (SEPs) can offer a unique strategic advantage for companies involved in standardized technologies. Drafting, prosecuting, and enforcing SEPs can be complex to navigate, and each benefits from relying on patent counsel who has experience with SEPs in the relevant technology. This Note discusses how counsel should be flexible when drafting and prosecuting patent applications to increase the likelihood of the resultant patents becoming SEPs, which may, in turn, improve the patent portfolio's value. Once drafted and prosecuted, claim charts can be a valuable tool for confirming the essentiality of the patent, facilitating SEP licensing, and enforcing an SEP in litigation.

Standard-Essential Patent Overview

An SEP is a patent that claims an invention essential to implementing a particular technology standard created by a group of participants known as a **standard-setting organization** (SSO). For example, Wi-Fi, USB, advanced video coding (AVC), LTE, and 5G are examples of different technology standards that set forth defined sets of features, functionalities, processes, or

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

components for interoperability, compatibility, and safety. For additional information on SSOs, see Participating in a Standard-Setting Organization Checklist.

SEPs have potentially significant value because any product, process, or system compliant with the relevant standard would need to implement the corresponding technical features covered by one or more claims of the SEP. To encourage the adoption of standards, many SSOs require participants in the standard's development to make a **fair, reasonable, and non-discriminatory** (F/RAND) licensing terms. F/RAND licensing obligations can help to prevent patent holders from demanding what some may deem to be exorbitant fees and to provide licensees access to the technology on reasonable terms. Based on the potential widespread adoption of standards, pursuing SEPs can result in significant income to patentees through licensing and royalty payments. For information on SEP licensing, including FRAND terms, see Practice Note, Standard-Essential Patent Licensing Management.

Patent Counsel Should Have Relevant Technical Expertise

When drafting, prosecuting, and enforcing SEPs, a company often relies on in-house counsel, inventors, outside patent counsel, and external experts (for example, for testifying or consulting). Among these, outside patent counsel often plays a significant role in determining the scope of the invention set forth in SEP claims and coordinating efforts between in-house counsel, inventors, and external experts.

While most patent counsel have a technical background, it can be crucial to hire counsel with (a) specific expertise in the technical field related to the standardized technology and (b) academic qualifications or practical experience in the relevant industry. The combination of specific expertise, academic qualifications, and practical experience can help to ensure a deep understanding of the subject matter that is often necessary to develop and successfully enforce SEPs, which can help to maximize the value of SEPs.

The importance of having counsel with technical and practical expertise in the specific field of an SEP lies in counsel's ability to navigate the complexities of the relevant standards and industries. Successfully obtaining and enforcing SEPs requires a thorough review of relevant standards documentation and the technical features covered by the respective standards and those described and claimed in the patent application. For example, keys to drafting a patent application with a reasonable likelihood of becoming an SEP may include:

- Identifying existing technical problems.
- Proposing improvements to the technical problems.
- Using terminology consistent with the respective standard.
- Explaining the terminology clearly and accurately.

Standards often evolve by addressing existing technical problems and adopting the most effective solutions. Changes to one aspect of a technical feature may cause adjustments to other aspects. Patent counsel must recognize these relationships and anticipate how an SSO might address them so that patent applications adequately cover future standards changes, often before they happen.

Counsel should thoroughly understand the outcomes of SEP discussions with inventors and in-house counsel. This understanding can better inform decisions related to:

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

- The focus and direction of patent application during prosecution.
- The identification of SEPs after patent issuance and subsequent release of new standards.
- The identification of standard-essential features for inclusion in claims of a continuation application.

A comprehensive understanding by outside patent counsel allows for more strategic decision-making that may increase the likelihood of success in securing and asserting SEPs. In some instances, inventors, in-house counsel, and outside patent counsel may find that through close collaboration and monitoring of developments in the relevant technology, they can:

- Identify potential differences between what was initially contemplated by the inventors and what may be adopted as a standard.
- Consider potential claim amendments during prosecution to more closely align with standards developments.
- Identify pending patent claims that may have recently become standard-essential based on analysis of a standard.
- Identify issued patent claims for potential SEP analysis and subsequent enforcement and licensing.

This collaboration can help establish a strong SEP portfolio cost-effectively by informing decisions as to which applications should receive more or fewer resources based on actual or likely standard-essentiality.

Flexible SEP Patent Drafting and Prosecution

Flexibility with Inventive Concepts

Patent counsel, inventors, and in-house counsel should capture as many inventive embodiments and alternatives as possible in a new specification to potentially cover inventions that could eventually become SEPs. This includes identifying existing problems and proposing improvements (solutions), which are often the foundation for obtaining SEPs. Often, there is more than one solution to an existing problem. Thus, having multiple inventors (scientists or engineers) brainstorm potential solutions and develop multiple inventive concepts can be beneficial. Ideas may come from different teams in the same company, providing individuals with different perspectives to contribute to the inventive concepts.

Inventors should also be open to various inventive approaches and ideas, as long as they are technically sound, rather than limiting a patent application to just what may be considered at the time to be the best solution. Patent counsel should explore alternatives with inventors and evaluate all solutions for potential inclusion in the application to increase the likelihood of any patent becoming an SEP.

For information on invention harvesting, see Practice Notes, Patent Portfolio Development and Management and Invention Disclosure Meetings: Software Inventions.

Flexibility with Provisional Patent Applications

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Provisional patent applications can be important for securing an early priority date and quickly preserving priority rights to protect core concepts while providing added flexibility to add more details at the nonprovisional application stage. Although not exclusive to SEP inventions, applicants may file provisional applications for potential SEP applications to secure an early priority date when the timing of the filing is critical in relation to a planned disclosure or standards meeting. In rapidly evolving industries, such as those relevant to SSOs, it is common for companies to compete for the earliest filing date on an order of days, as opposed to weeks or months.

A provisional patent application can often be prepared and filed faster than a nonprovisional. This difference in timing is because a provisional patent application can be derived from informal documentation, such as text or slides that may soon after be submitted for consideration by a standards body and any additional content or alternatives being considered by the inventors. Additionally, a provisional patent application does not have the same content requirements as a nonprovisional patent application, such as drawings, detailed descriptions, and claims. While a provisional application should include a description of the invention with sufficient details to support future claims for such concepts in a later-filed nonprovisional patent application, it need not include all of the formal content requirements of a nonprovisional patent application. (35 U.S.C. § 111(b); 37 C.F.R. § 1.151; MPEP §§ 601(II) and 601.01(b).)

Covering Core Concepts

Companies can take steps to help increase the likelihood of obtaining an SEP. As a standard submission deadline approaches, patent counsel should consider filing one or more provisional patent applications that cover core concepts for solutions relevant to the standard. These filings should:

- Occur before the standard submission deadline.
- Focus on standards-related features.

As inventions covered in a provisional application may not always be fully developed at the time of filing, patent counsel should balance early filing with the need to ensure that core concepts are sufficiently disclosed.

Patent counsel should also consider drafting the provisional patent application to include variations and different embodiments that may be part of the standard in future versions. For example, the variations and different embodiments may help serve as a basis for supporting a priority claim for a future nonprovisional application. In addition, the variations and different embodiments should be reasonable in view of the technical features and written to avoid language that may contradict the specification or claims in a future nonprovisional application. This approach of early provisional filing provides flexibility while protecting inventive ideas as the technology and standards advance.

For more information on provisional patent applications, see Practice Note, Patent Prosecution: Overview: Provisional Applications.

Sufficient Description

While timing is crucial for filing provisional patent applications, especially in SEPs, a common pitfall is providing an insufficient description due to time pressure. Balancing the need for a sufficient description with the urgency to file can be better managed by patent counsel having extensive experience in the relevant technical field. They can quickly understand the **prior art** and identify new features to describe in the application, ensuring that future claims are adequately supported and reasonably likely to become standard-essential.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

For information on sufficient details to support claims, see Practice Notes, Patent Drafting: The Specification: Detailed Description of the Invention and Patent Litigation: Specification Requirements: The Legal Requirements of 35 U.S.C. § 112.

Filing Multiple Provisional Applications Within One Year

Counsel can consider filing a series of provisional patent applications, where each subsequent application discloses incremental improvements or variations covering the technology or standard as it evolves. These sequential applications can be followed by a nonprovisional patent application filed within one year of the first provisional, which claims benefit to each of the sequentially filed provisional patent applications.

This multi-provisional approach offers two main benefits. First, filing a series of provisional patent applications can establish earlier priority dates for different aspects of an invention as they are developed. When multiple inventive ideas related to the same overall concept are developed, provisional patent applications can promptly be filed for each concept or improvement. A new inventive idea can be captured relatively quickly in a provisional patent application, particularly for sequentially filed follow-on provisional applications. Second, a patent applicant has the flexibility to add details and supporting information, alternative embodiments, or experimental results, in subsequent provisional patent applications within the one year deadline from the first filed provisional patent application, which can provide an overall enhanced application by the time of filing a nonprovisional application.

This multi-provisional filing strategy allows a patent applicant to refine and expand on its original submission while protecting the earlier ideas, potentially strengthening any later filed nonprovisional application.

For information on filing nonprovisional patent applications, see Practice Note, Patent: Overview: Filing and Prosecuting Patent Applications and Patent Specification Preparation Checklist.

Creating Claim Charts to Evaluate Essentiality

After identifying patents that read on a standard, counsel should consider preparing detailed claims charts to map (or correlate) the claims to the required features in the standard. The use of tables, color-coded text, and explanatory commentary can be helpful in this process, which may be similar to preparing a claim chart that maps claims to a potentially infringing product. This may be accomplished by:

- Identifying basic features in a standard that align with the novel concepts of a patent claim.
- Mapping the novel claim concepts with a corresponding feature disclosed in and required by the standard. Naturally, portions of the standard relied upon for novel claim features must not have been disclosed in any release or version of the standard that pre-dates the patent's priority date.
- After mapping the novel claim concepts, mapping all other patent claim elements to one or more features disclosed in and required by the standard.

If a claim recites features that are not in the standard, or that are addressed in different ways in the standard, those features should be revisited or considered for removal in a continuation claim to increase its likelihood of becoming standard-essential.

For information on creating claim charts and an example, see Practice Note, Patent Monetization: Claim Charts and Example Claim Chart.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Claim Chart Advantages

Drafting claim charts to map claim elements to features in a standards document can offer several advantages, including helping patentees determine whether they own SEPs. This determination may be accomplished by mapping claim elements to features described in a standard to help ensure that the claim elements cover the standard's features without omission. Partial coverage may indicate that a patent is not standard-essential. Where a claim does not directly map to a particular standard feature, patent counsel can address this discrepancy via an amendment, a continuation application, or a reissue application.

Additional advantages include licensing patents as SEPs and assessing the potential for patent infringement litigation. Potential licensees may be unwilling to pay for an SEP license unless they are convinced they have a risk of being found to infringe the SEP by implementing corresponding technical features covered by one or more claims of the SEP. In this regard, a claim chart can be used to convince a potential licensee by comparing features of accused products to technical features in a standard and one or more corresponding claim elements of a patent, because it can visually represent how a product may infringe a patent claim. For information on licensing SEPs, see Practice Note, Standard-Essential Patent Licensing Management.

For similar reasons, a claim chart can assist with prefiling investigations and help establish a basis for the Federal Rules of Civil Procedure (FRCP) Rule 11 to bring an infringement lawsuit. For example, patentees can use these claim charts to compare features of accused products to technical features in a standard and one or more corresponding claim elements of a patent. After preparing a claim chart to demonstrate that a claim is an SEP claim, the patentee can determine whether a product complies with the same standard as in the claim chart. This determination may be accomplished using public information about an accused product, such as specification sheets, user guides, product manuals, and product-related websites. These standard-compliant admissions can be included within a claim chart to connect the dots from the claim element to the standard and the product implementing the standard. This process may help to determine the strengths and weaknesses of a potential infringement claim.

For information on creating claim charts and an example, see Practice Note, Patent Monetization: Claim Charts.

For information on prefiling investigations and Rule 11, see Practice Note, Patent Litigation: Overview (United States): Patent Owner's Pre-Suit Investigation and Preparation.

Claim Chart Pitfalls

A common pitfall in preparing a claim chart includes mapping claim elements to different parts of a standard without showing how those elements are connected. In patent infringement cases, showing how elements are connected helps to ensure the effectiveness of the claim chart and can mitigate technical complexities of the patent and the alleged infringement for the jury (typically the audience in a patent infringement case).

Another common pitfall is relying on features that, while disclosed or referenced in a standard, are nevertheless disclosed as optional. These optional standard features either may not be implemented in accused products complying with the standard or may be later removed by an accused infringer, significantly reducing potential damages and the possibility for injunctive relief. Since an infringement suit relying on one or more optional features in a standard may fail, patent counsel should verify the essentiality of the enforced patent to ensure that the features presented in the claim charts are mandatory in the standard.

Broadening Continuation Applications

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

After filing a nonprovisional patent application, patent counsel may consider filing one or more continuation applications that claim priority to the originally filed nonprovisional patent application. For information on continuation applications and claiming priority, see Practice Note, Patent Prosecution: Continuing Patent Applications.

Filing continuation applications can be used to pursue broader claims covering features described in a standard. Like narrower claim sets, counsel should also map broader claims to the standard. While correlating the same or similar terms in a narrower claim and a standard may provide a clear mapping, in some instances, using broader claim terms may be advantageous to capture a broader scope of the invention while still reading on the standard.

In drafting broadening continuation claims, patent counsel should consider the following three elements:

- The novel claim features that read on the standard.
- The remaining scope of the standard.
- The scope described in the patent specification.

Contemplating these three elements, consider the example where an applicant first pursues a nonprovisional application with claims having the same terms as those recited in a standard, followed by a continuation application with broader claims. Based on the intersection of these three elements, the applicant may find common ground for the claims in the broadening continuation applications.

The following examples illustrates two scenarios for broadening continuation applications using examples of fruit. In the first example, if a standard recites "apple" and a specification describes "apple," a broader claim could recite "fruit" to read on "apple" and potentially other types of fruit. As another example, if a standard recites "apple" and a specification describes "orange," a broader claim may also recite "fruit" to read on "orange" and potentially "apple."

This approach of pursuing initially narrower claims, followed by potentially broader claims in a continuation application, can allow for flexibility in claim drafting within an application family while maximizing the potential scope of protection.

Furthermore, this approach can anticipate future standards and evolving technologies. For example, today's "apple" could become tomorrow's "orange." If claims only recite "apple," a patent portfolio may be limited to a particular standard that could be less useful as the standard evolves. In this regard, even if claims may not be standard essential, pursuing claims that are currently implemented or are likely to be implemented by products complying with the relevant standard may be beneficial.

Additionally, a portfolio with patents of various scopes may support validity and infringement strategies. Patents with a broader scope may be easier to enforce for infringement but also may face a higher risk of invalidation. Inversely, patents with a narrower scope may be stronger in validity but more difficult to prove infringement.

SEP Litigation

SEP litigation involves legal disputes over patents that are crucial for industry standards. These cases often center on whether the patent holder is licensing the patents on F/RAND terms and can significantly impact market competition and innovation.

Clear and Compelling Story for Litigation

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

In patent litigation, the patent owner's counsel must convey a clear and compelling story about the claimed invention to jurors and judges. This story should, at a minimum, explain how the invention solves a real problem using easy-to-understand language and examples. Judges and jurors often do not have a technical background in the subject matter of asserted patents. To address this, a technical expert is frequently used to explain the patent and its claims, the accused product, and, for SEPs, the applicable standard.

Counsel should use claim charts to demonstrate the essentiality of the asserted claims of SEPs, and they can further provide a roadmap for an infringement case. These claim charts can be similar to the claim charts drafted during prosecution of the relevant patent applications. However, a notable difference is that they must include additional content that connects the operations of the particular standard to the accused products. Additionally, in claim charts used for litigation, counsel should be careful to avoid unnecessary content such as commentary, potentially inconsistent additional mappings, and any other content (for example, color-coded mapping) that could be argued by an accused infringer to support a particular claim scope (for example, narrower or broader scope) than may be intended by the patent owner, as doing so may negatively impact the patent owner's infringement or validity positions.

Infringement allegations based on a confusing or disjointed claim chart are less likely to convince a judge or jury. Similarly, securing a favorable ruling of infringement becomes less likely for a patentee if the technical complexities of the patent and the alleged infringement are presented in a manner that is difficult to understand and follow. This issue is compounded when non-adjacent or non-continuous portions of a standard are presented in a claim chart without showing how they fit together to describe a common operation or aspect of a system described in the standard, and ultimately, as implemented by an accused product. This lack of clarity can make it more challenging for a judge or jury to find infringement because they may be unable to tie together the different non-adjacent portions of a standard and the respective operations of an accused product. Accordingly, if claim elements are mapped to non-adjacent parts of a standard, presenting them in a way that makes their relationship clear and supports a coherent story can be very helpful, particularly when further mapping those operations to operations of an accused product. For example, technical experts can help explain a disjointed claim chart by giving a coherent story. The story can include a use case of the claims, how the use case is presented in the corresponding non-adjacent parts of the standard, and how those operations are ultimately performed in an accused product.

In addition to guidance from technical experts, non-standards documents like textbooks or technical articles can help clarify the complexities of the technology. For example, textbooks often provide more straightforward explanations of technical features than many standards documents, which are typically written for an audience with significant experience in standards-related terminology. These outside sources can help fill in the gaps or clarify the technical complexities, making it easier to prove to a non-technical person, such as a juror, that a claim is standard-essential and that infringement has occurred.

SEP Advantages in Anticipation of Litigation

SEPs are often subject to F/RAND licensing terms. While F/RAND licensing terms may impact a damages model and limit opportunities for injunctive relief (for example, offering to license under F/RAND terms may cut against an argument that monetary damages are an inadequate remedy), SEPs may hold significant other value in litigation. For example, SEPs may provide advantages such as simplifying pre-suit investigations, focusing fact discovery, reducing discovery cost, and strengthening expert discovery and infringement proof (see Simplified Pre-Suit Investigations, Efficient Fact Discovery, and Efficient Expert Discovery). Additionally, injunctions may still be available for SEPs, even though they may be potentially more difficult to obtain (see Availability of Injunctions).

Simplified Pre-Suit Investigations

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

SEPs can provide simplicity at the pre-suit stage, especially for litigation against multiple accused infringers. Early infringement investigations can rely on publicly available information to simplify and reduce overall costs by using publicly available standards documents, product specifications, and manuals of the potential infringer. In the case of standards documents, they can describe the required operations to implement a standard, which can be mapped to claims of a patent to show whether the claims read on the standard. Product specifications and manuals can also aid in pre-suit investigations as they often indicate whether a product complies with a standard, which can be paired with the SEP analysis to establish a Rule 11 basis for alleging infringement by a standard-compliant product.

In some instances, pre-suit analysis for SEPs may be less complicated than for non-SEPs. Non-SEPs often require a robust reverse engineering of an accused product to verify whether the product may infringe a patent claim before filing a complaint. For information on reverse engineering, see Practice Note, Patent Monetization: Reverse Engineering Costs.

In contrast, SEPs may rely on publicly available product specifications and manuals of potential infringers that identify standards compliance of a product and use publicly available standards documents to fill in the gap for remaining operational details that the product must include if it complies with the standard.

In some cases, the non-SEP litigation is more demanding because it can require a significant and customized analysis where each accused product (and the respective infringement analysis) may significantly differ in its operation. On the other hand, in SEP litigation, a patent claim identified as standard-essential may be reused in subsequent pre-suit infringement analysis for SEP litigation involving standard-compliant products. This potentially offers a significant cost reduction against additional accused infringers in subsequent litigation because mapping claims to a standard provides enforcement opportunities against multiple defendants. For example, counsel can often easily modify claim charts during pre-suit analysis for one infringer to apply to other accused infringers and products complying with the same standard.

Efficient Fact Discovery

Relying on a standard can help the plaintiff in litigation focus on the most relevant technical operations for obtaining fact discovery and hold a defendant accountable for producing relevant product documentation corresponding to the technical operations. In SEP litigation, discovery can be more targeted and efficient because the plaintiff has more precise knowledge of the technical operations required for standard compliance. For example, standards that recite specific features, such as algorithms, mathematical operations, modules, signal names, sequences, or values, can provide a roadmap for identifying corresponding features in a product. These product features may be obtained through fact discovery, such as information contained in source code, hardware description language (HDL) code, and product design documentation.

Discovery disputes can also be resolved quickly in the patent owner's favor when litigating SEPs against defendants who initially fail to produce relevant product information. For example, it is likely difficult for defendants to argue that their products do not perform certain standard-essential operations (or that the defendants need not produce information about them) if a standard requires those operations and the defendant has already publicly conceded its product complies with that standard.

Efficient Expert Discovery

Expert discovery can be costly in patent litigation, but it can be made more efficient by focusing an expert's investigation on the most relevant technical documentation. This documentation can be directed specifically to standard-essential operations, using an SEP claim chart as a roadmap. Additionally, expert reports and testimony gain strength by relying on highly focused technical product information, standards documents, and a defendant's admission that their product complies with relevant standards and must perform specific operations. As a result, in SEP litigation, expert discovery can increase efficiency and potentially provide stronger proof of infringement relative to non-SEP litigation.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Availability of Injunctions

While SEPs are typically subject to F/RAND terms, injunctions may still be available for SEPs, even if they may be less likely to be obtained. For example, while it may be difficult to prove that an SEP holder has suffered irreparable harm sufficient to warrant an injunction under the *eBay* factors, the Federal Circuit has held that it would be error for a "district court [to apply] a per se rule that injunctions are unavailable for SEPs." (*Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1331-32 (Fed. Cir. 2014), overruled in part on other grounds by Williamson v. Citrix Online, LLC, 792 F.3d 1339 (Fed. Cir. 2015).) The Federal Circuit has noted that "a patentee subject to FRAND commitments may have difficulty establishing irreparable harm . . . [but] an injunction may be justified where an infringer unilaterally refuses a FRAND royalty or unreasonably delays negotiations to the same effect" (*Apple Inc.*, 757 F.3d at 1332; see *Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.*, 120 F.4th 864 (Fed. Cir. 2024)). This is consistent with the Supreme Court's decision in eBay Inc. v. MercExchange, LLC, which clarified that a patent owner's licensing activities should not automatically preclude a permanent injunction (547 U.S. 388, 393 (2006)). The U.S. International Trade Commission sought public comments on whether the owners of SEPs can obtain ITC import bans on infringing products in February 2025 (see *In re Certain Video Capable Devices*, 90 Fed. Reg. 11183-01 (Feb. 27, 2025). It is unclear whether the ITC has adopted a position on this issue.

A patent owner can still demonstrate irreparable harm in the context of a preliminary injunction, even for patents that have been licensed to others (*Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1361-62 (Fed. Cir. 2008); see Practice Note, Patent Litigation: Preliminary Injunction Considerations: Establishing Irreparable Harm). However, a patent owner may struggle to establish irreparable harm if it only provides evidence of harm to its licensees without showing any harm to itself (see *Voda v. Cordis Corp.*, 536 F.3d 1311, 1329 (Fed. Cir. 2008)).

The US federal government has also issued policy statements regarding SEP-based injunctions over the last decade. The first Trump administration issued a Policy Statement (December 19, 2019) that owners of SEPs should be able to obtain injunctions when those patents are infringed. While the Biden administration withdrew that policy statement (see Withdrawal of 2019 Policy Statement (June 8, 2022)), it nevertheless stated that "DOJ will review conduct by SEP holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition." At the time of this Note, the second Trump Administration has not issued a formal policy statement.

For more information on injunctions, see Practice Notes, Patent Litigation: Permanent Injunctions and Patent Litigation: Preliminary Injunction Considerations.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.