

**Testimony of Dr. Walter G. Copan  
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**Before the House Judiciary Committee  
Subcommittee on Courts, Intellectual Property, and the Internet**

**“IP and Strategic Competition with China: Part IV – Patents, Standards, and  
Lawfare”**

**December 18, 2024**

**Oral Testimony Summary**

Chairman Issa, Ranking Member Johnson, members of the Committee and distinguished participants. It is a privilege to testify on critical issues for U.S. innovation leadership, global economic competitiveness and national security. It is my honor currently to lead research and technology transfer at Colorado School of Mines, affectionately known as “Mines” a top tier U.S. research university and rated in the top 3 engineering programs in the nation.

I recently served our Nation as Director of the National Institute of Standards and Technology and prior, with two of the U.S. Department of Energy national laboratories. From my leadership experience in public and private sectors—as corporate executive, entrepreneur and investor—the requirement to have clear, enforceable intellectual property rights (IPRs) and the right to exclude others is foundational to innovation success. Investors must confirm that an organization’s IPRs will secure a protectable market position and provide pathways to achieve returns on investment as part of their justification to take on substantial investment risk. Strong IPRs enable innovators to advance technology leadership, incentivize investment, and create value from inventions essential to global standards.

The United States is at a crucial juncture regarding the future of American innovation leadership for the world, and our economic security and national security are closely intertwined with the reliability and protections afforded by our IP and innovation system. The foundational strength of U.S. IPRs, as established by the framers of the Constitution, must continue with the enforceability of the rights of inventors in the U.S. and abroad, together with the rule of law and respect for private contracts.

The U.S must once again lead the world by example, through the development of IPR policies that support innovation at home and across jurisdictions. Reliable IP rights and contracts that are respected globally include the key role of standard essential patents (SEPs), and the U.S. must demonstrate leadership in foreign markets, including with the EU and China. This includes restoring the ability of rights holders to obtain injunctive relief,<sup>1</sup> and to avoid willful infringement and documented holdout<sup>2</sup> by parties unwilling to enter license agreements with SEP rights holders under Fair Reasonable and Non-Discriminatory (FRAND) terms.

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<sup>1</sup> <https://www.justice.gov/atr/page/file/1228016/dl>

<sup>2</sup> <https://btlj.org/wp-content/uploads/2023/11/0010-38-Haas-Gupta.pdf>

Where such negotiations fail in a free-market economy, knowledgeable American courts can provide resolution with expertise and wisdom. All are essential for rebuilding and maintaining U.S. leadership in globally relevant standards today.

The U.S. leads the world in key standards and, consequently, is a net exporter of innovation. Reliable IP rights licensed to development and manufacturing partners enable trusted global supply chains and value creation for consumers and shareholders alike. The mobile telecommunications sector contributes an estimated total economic value of more than \$4.8 trillion to the global innovation economy.<sup>3</sup> Technology innovators, including holders of SEPs, gain returns on their investments in R&D and standards engagement through licenses and royalty payments, in addition to product and services sales. The revenue flows from commerce in intellectual assets contribute positively to the U.S. trade balance, with Chinese companies contributing over \$70 Billion in net IP payments to U.S. entities in 2020. Most of the royalties for standardized technologies are paid to western corporations by companies based in Asia, and principally by China's companies. However, there is widespread unlicensed technology use in China of innovations and IP assets owned by U.S. entities, that deliver little or no return to U.S. innovators nor to the U.S. economy. Further, China's government has weaponized its legal system with a wide range of patent and competition law tools, price controls on international entities, forced technology transfers, and by providing selective legal protections to its own companies together with incentives seeking to advantage Chinese entities.<sup>4</sup>

There is a concerning movement from market-based negotiations and valuation to government-controlled price regulation for standardized technologies. The EU has proposed a massive new regulatory regime<sup>5</sup> that would put government in control of SEP prices, followed by the Chinese Communist Party's guidelines that would apply its antitrust laws to SEP licenses to benefit Chinese entities.<sup>6</sup> Supported by the Chinese government with incentives, and with legal actions by their provincial and national courts, China's technology companies are gaining ground.<sup>7</sup>

As we look to rebuild America's advanced manufacturing base, with a trained domestic workforce and trusted, resilient supply chains, the U.S must build upon the strengths of our free market economy, and a reliable intellectual property and innovation system that continues to lead the world.

I'm encouraged by some of the legislation proposed to a strengthen the U.S innovation system, including the bipartisan [Patent Eligibility and Restoration Act \(PERA\) of 2023](#), the [Promoting and Respecting Economically Vital American Innovation Leadership \(PREVAIL\) Act](#), and the [Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive \(RESTORE\) Patent Rights Act of 2024](#).

Thanks to this subcommittee for your important work toward securing the technology and innovation leadership for U.S. economic and national security. I look forward to answering questions you may have.

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<sup>3</sup>[https://s3.amazonaws.com/media.hudson.org/The+Western+Innovators+of+the+Mobile+Revolution\\_+The+Data+on+Global+Royalty+Flows+to+U.S.+and+Europe+and+Why+It+Matters+-+Jan+2024.pdf](https://s3.amazonaws.com/media.hudson.org/The+Western+Innovators+of+the+Mobile+Revolution_+The+Data+on+Global+Royalty+Flows+to+U.S.+and+Europe+and+Why+It+Matters+-+Jan+2024.pdf)

<sup>4</sup> DOI: <https://doi.org/10.15779/Z38XP6V46N>

<sup>5</sup> [https://single-market-economy.ec.europa.eu/publications/com2023232-proposal-regulation-standard-essential-patents\\_en](https://single-market-economy.ec.europa.eu/publications/com2023232-proposal-regulation-standard-essential-patents_en)

<sup>6</sup> <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/china-draft-sep-antitrust-guideline-released-by-samr-for-public-comment>

<sup>7</sup> <https://www.telegraph.co.uk/business/2024/04/30/huawei-profits-surge-steal-market-share-apple-china/>