



## WITHDRAWAL OF 2019 POLICY STATEMENT ON REMEDIES FOR STANDARDS-ESSENTIAL PATENTS SUBJECT TO VOLUNTARY F/RAND COMMITMENTS

June 8, 2022

The U.S. Patent & Trademark Office (USPTO), the National Institute of Standards and Technology (NIST), and the U.S. Department of Justice, Antitrust Division (DOJ) hereby withdraw the December 19, 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments (2019 Policy Statement). After considering potential revisions to that statement, the Agencies have concluded that withdrawal best serves the interests of innovation and competition.<sup>1</sup>

The USPTO is the executive-branch agency charged with examining patent and trademark applications, issuing patents and registering trademarks, and—through the Secretary of Commerce—advising the President on domestic and certain international issues of intellectual property policy. NIST is the executive-branch agency charged with facilitating standards-related information sharing and cooperation among federal agencies and with coordinating federal agency participation in, and use of, private sector standards, emphasizing where possible the use of standards developed by private, consensus organizations, and—through the Secretary of Commerce—advising the President on standards policy pertaining to the nation’s

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<sup>1</sup> In withdrawing the 2019 Policy Statement, the agencies do not reinstate the January 8, 2013, [Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments](#) issued by the DOJ and the USPTO.

technological competitiveness and innovation ability. The DOJ is the executive-branch agency charged with promoting and protecting competition through the enforcement of the antitrust laws.

The USPTO, NIST and DOJ (collectively the “Agencies”) recognize that standards-developing organizations (SDOs) and the widespread and efficient licensing between standards-essential patent (SEP) holders and those who seek to implement technologies subject to reasonable and non-discriminatory (RAND) or fair, reasonable and non-discriminatory (FRAND) terms (collectively F/RAND)<sup>2</sup> commitments helps to promote technological innovation, further consumer choice, and enable industry competitiveness including in emerging technologies and market entry of new and small-to medium-sized entities, whose participation in the standards ecosystem is important to promoting innovation and job creation in today’s dynamic marketplace.

The laws of the United States of America, as embodied in our Constitution, statutes and regulations; as interpreted and administered by the courts; and as enforced by DOJ and other agencies, can further these purposes. In exercising its law enforcement role, 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.

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<sup>2</sup> A patent is subject to a RAND or FRAND commitment when a patent holder has voluntarily committed to make available a license for the patent on RAND or FRAND terms while participating in standards-setting activities at an SDO. SDO members may commit to license all of their patents that are essential to the SDO standard on RAND or FRAND terms. For the purposes of this statement, F/RAND refers to both types of licensing commitments. Commenters frequently use the terms interchangeably to denote the same substantive type of commitment. The specific RAND or FRAND obligations are contractual obligations that vary by SDO.