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March 13, 2018
The Standards Innovation Ecosystem: Past, Present and Future

*** Where Innovation Matters Most ***

Japan Patent Office

Licensing 5G SEPs

David J. Kappos
Standards Innovation Ecosystem
The U.S. IP System: A “System in Decline”

- **Headline News from IPWatchdog, April 26, 2017**
  - The Top 3 Reasons the U.S. Patent System in Decline
    - Gene Quinn

- **2018 Patents, Related Rights, and Limitations Scores (GIPC IP Index)**

In 2018, in the patent rights category, the U.S. has fallen to 12th place.
U.S. IP System Perceived as Too Strong

- **News from Pittsburgh Post-Gazette, July 26, 2007**

  - The patent system is broken: Reform is needed to stimulate U.S. innovation

  ° *Bill McDermott*
No Longer a Myth, the Emergence of the Patent Troll: Stifling Innovation, Increasing Litigation, and Extorting Billions

By John F. Luman III and Christopher L. Dodson
Patent Trolls Narrative Dominated U.S. Policy-Making

**PATENT TROLLS ARE A PROBLEM IN THE U.S.**

Patent trolls hijack ideas and extort money from those who do the real work.

Today the Administration is taking action to protect innovators and ensure the highest-quality patents in our system.

WH.GOV/PATENTTROULLS

JUNE 4, 2013
U.S. Supreme Court Scales Back Patent Strength

- 2006: eBay v. MercExchange
- 2007: KSR v. Teleflex
- 2014: Octane Fitness LLC v. Icon Health & Fitness Inc.
• “The America Invents Act will . . . improve the quality of patents that are issued; and it will provide more certainty in litigation . . . . Patents of low quality and dubious validity . . . enable patent trolls who extort unreasonable licensing fees from legitimate businesses, and constitute a drag on innovation.”

  ° Senator Patrick Leahy, Feb. 28, 2011
Antitrust vs. IP
Antitrust Concerns

Patent Hold-up

Royalty Stacking

No Evidence

Broken FRAND Norms
Antitrust Law and SEPs: Favoring the Implementer
New Direction for Antitrust

Assistant Attorney General Makan Delrahim Delivers Remarks at the USC Gould School of Law's Center for Transnational Law and Business Conference

Los Angeles, CA ~ Friday, November 10, 2017
SSPPU Theory Infects SSO Policy

“Determination of Reasonable Rates should include...

• The value that the functionality of the claimed invention or inventive feature within the Essential Patent Claim contributes to the value of the relevant functionality of the **smallest saleable** Compliant Implementation that practices the Essential Patent Claim.

• The value that the Essential Patent Claim contributes to the **smallest saleable** Compliant Implementation that practices that claim, in light of the value contributed by all Essential Patent Claims for the same IEEE Standard practiced in that Compliant Implementation...”
SSPPU Was Designed For Juries Awarding Damages
SSPPU is Not Generally Applicable to SEP Licensing
Innovation Ecosystem is Under Siege

- Weakening IP systems
- Antitrust regulation
- Inappropriate SSO policies
Sustainable Innovation Requires Balance

Innovator  Implementer

Because Innovation Matters Most!
Domo Arigato Gozaimashita

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